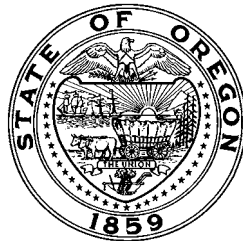


OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

Volume 43, No. 2
February 1, 2004

For December 16, 2003–January 15, 2004



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

INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2003-2004 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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

TABLE OF CONTENTS

	Page
Information and Publication Schedule	2
Table of Contents	3
Other Notices	4, 5
 Notices of Proposed Rulemaking Hearings/Notices	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Board of Parole and Post-Prison Supervision, Chapter 255	6
Board of Pharmacy, Chapter 855	6
Construction Contractors Board, Chapter 812	6, 7
Department of Administrative Services, Human Resource Services Division, Chapter 105	7
Department of Agriculture, Chapter 603	7, 8
Department of Community Colleges and Workforce Development, Chapter 589	8
Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, Chapter 437	8
Department of Corrections, Chapter 291	8, 9
Department of Fish and Wildlife, Chapter 635	9
Department of Forestry, Chapter 629	9
Department of Human Services, Child Welfare Programs, Chapter 413	9
Departmental Administration and Medical Assistance Programs, Chapter 410	9, 10
Public Health, Chapter 333	10
Self-Sufficiency Programs, Chapter 461	10-12
Vocational Rehabilitation Services, Chapter 582	12
Department of Justice, Chapter 137	12
Department of Public Safety Standards and Training, Chapter 259	12
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	12, 13
Highway Division, Chapter 734	13
Rail Division, Chapter 741	13
Department of Veterans' Affairs, Chapter 274	13
Division of State Lands, Chapter 141	13, 14
Oregon Department of Education, Chapter 581	14
Oregon Public Employees Retirement System, Chapter 459	14
Oregon State Lottery, Chapter 177	14, 15
Oregon State Marine Board, Chapter 250	15
Oregon University System, Chapter 580	15
Oregon University System, Southern Oregon University, Chapter 573	15
University of Oregon, Chapter 571	15
Western Oregon University, Chapter 574	15
Oregon Youth Authority, Chapter 416	15, 16
Parks and Recreation Department, Chapter 736	16
Public Utility Commission, Chapter 860	16, 17
Racing Commission, Chapter 462	17
Secretary of State, Archives Division, Chapter 166	17
Water Resources Department, Chapter 690	17, 18
 Administrative Rules	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Board of Accountancy, Chapter 801	19-32
Board of Nursing, Chapter 851	32-34
Board of Parole and Post-Prison Supervision, Chapter 255	34, 35
Board of Pharmacy, Chapter 855	35, 36
Bureau of Labor and Industries, Chapter 839	36-41
Construction Contractors Board, Chapter 812	41-43
Department of Administrative Services, Budget and Management Division, Chapter 122	43-44
Human Resource Services Division, Chapter 105	44
Office of Business Administration, Chapter 121	45
Department of Agriculture, Chapter 603	45, 46
Department of Agriculture, Oregon Albacore Commission, Chapter 972	46
Oregon Alfalfa Seed Commission, Chapter 624	46-48
Oregon Bartlett Pear Commission, Chapter 606	48, 49
Oregon Beef Council, Chapter 605	49
Oregon Blueberry Commission, Chapter 670	49, 50
Oregon Dairy Products Commission, Chapter 617	50, 51
Oregon Dungeness Crab Commission, Chapter 645	51
Oregon Fryer Commission, Chapter 620	52
Oregon Orchardgrass Seed Producers Commission, Chapter 655	52, 53
Oregon Processed Vegetable Commission, Chapter 647	53
Oregon Raspberry and Blackberry Commission, Chapter 611	53, 54
Oregon Salmon Commission, Chapter 646	54, 55
Oregon Sheep Commission, Chapter 644	55, 56
Oregon Strawberry Commission, Chapter 668	56, 57
Oregon Sweet Cherry Commission, Chapter 669	57-59
Western Oregon Onion Commission, Chapter 608	59, 60
Department of Consumer and Business Services, Building Codes Division, Chapter 918	60
Director's Office, Chapter 440	60-62
Division of Finance and Corporate Securities, Chapter 441	62-69
Insurance Division, Chapter 836	69-71
Minority, Women and Emerging Small Business, Chapter 445	71-76
Oregon Occupational Safety and Health Division, Chapter 437	76-80
Department of Corrections, Chapter 291	80-85
Department of Fish and Wildlife, Chapter 635	85-88
Department of Human Services, Child Welfare Programs, Chapter 413	88-111
Departmental Administration and Medical Assistance Programs, Chapter 410	111-117
Mental Health and Developmental Disability Services, Chapter 309	117, 118
Public Health, Chapter 333	118-127
Self-Sufficiency Programs, Chapter 461	127-145
Seniors and People with Disabilities, Chapter 411	145-225
Vocational Rehabilitation Services, Chapter 582	225-229
Department of Justice, Chapter 137	230-248
Department of Oregon State Police, Office of State Fire Marshal, Chapter 837	248-255
Department of Public Safety Standards and Training, Chapter 259	255-258
Department of Revenue, Chapter 150	258-274
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	275-277
Motor Carrier Transportation Division, Chapter 740	277
Department of Veterans' Affairs, Chapter 274	277-279
Employment Department, Chapter 471	280-284
Employment Department, Child Care Division, Chapter 414	284-294
Landscape Contractors Board, Chapter 808	294-297
Oregon Criminal Justice Commission, Chapter 213	297-304
Oregon Department of Education, Chapter 581	304-319
Oregon Economic and Community Development Department, Chapter 123	319, 320
Oregon Housing and Community Services, Chapter 813	320, 321
Oregon Liquor Control Commission, Chapter 845	321
Oregon Public Employees Retirement System, Chapter 459	321, 322
Oregon State Lottery, Chapter 177	322-326
Oregon State Treasury, Chapter 170	326
Oregon Student Assistance Commission, Office of Degree Authorization, Chapter 583	327
Oregon University System, Chapter 580	328
Parks and Recreation Department, Chapter 736	328-331
Public Utility Commission, Chapter 860	331-336
Real Estate Agency, Chapter 863	336-343
Secretary of State, Elections Division, Chapter 165	343, 344
 OAR Revision Cumulative Index	 345-364

OTHER NOTICES

NOTICE OF OPPORTUNITY TO COMMENT DRAFT *TECHNICAL BASIS FOR REVISING TURBIDITY CRITERIA* — CLEAN WATER ACT

Comment requested: For the past year, the Oregon Department of Environmental Quality (DEQ) has been developing changes to water quality criteria for turbidity to better address the effects of turbidity on beneficial uses. The draft *Technical Basis for Revising Turbidity Criteria* provides the technical analysis supporting revised criteria. DEQ is inviting comment on the draft technical support document at this time, before proposing to adopt the revised the criteria as rule amendments to OAR chapter 340, division 041.

The turbidity criteria describe the minimum quality of water needed to protect beneficial uses. DEQ use turbidity criteria to develop wastewater discharge permits, issue 401 certifications, identify water quality-impaired water bodies, and determine pollution load limits for impaired water bodies.

Who may be affected by the technical support document? DEQ will rely on the technical support document to determine whether and how to revise the turbidity criteria. The public interested in the quality of Oregon's waters and small and large businesses, communities, and public agencies that conduct activities that increase turbidity in waters of the state may be affected by any changes to the turbidity criteria.

How was the document developed? DEQ consulted with external and internal technical advisory groups to develop the draft technical support document.

Where can I obtain the technical document? The draft *Technical Basis for Revising Turbidity Criteria* is available on DEQ's website: <http://www.deq.state.or.us/wq/standards/WQStdsReview.htm> and at DEQ's headquarters in downtown Portland. Please contact Tom Rosetta to obtain copies or arrange an appointment to review the document.

How to comment: Please submit comments on the draft *Technical Basis for Revising Turbidity Criteria* in writing by **5:00 p.m. on March 3, 2004, to:**

Tom Rosetta, DEQ, Water Quality Division,
811 SW Sixth Ave., Portland, OR 97204-1390,
fax 503-229-6037, or rosetta.thomas@deq.state.or.us

Next steps: DEQ may propose changes to the water quality criteria for turbidity for public comment in late March or April 2004.

Alternative formats/accommodations: Alternative formats of this document can be made available by contacting DEQ's Office of Communications & Outreach, Portland, at (503) 229-5317.

PROPOSED APPROVAL OF CLEANUP AT FORMER STANDARD BULK PLANT — CHILOQUIN KLAMATH COUNTY, OREGON

COMMENTS DUE: February 28, 2004

PROJECT LOCATION: Klamath Avenue and Chocktoot Street, Chiloquin

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on results of site investigation performed at the former Standard Oil Bulk Plant site located at Klamath Avenue and Chocktoot Street in Chiloquin, Oregon.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site including the installation and quarterly monitoring of six groundwater monitoring wells and the drilling of two soil borings. All compounds detected in soil samples collected during the drilling of the monitoring wells and soil borings were less than site specific or generic Risk Based Concentrations (RBCs). Groundwater is between 3.9 feet below ground surface (bgs) and 6.5 feet bgs. All compounds detected in groundwater samples have been less than occupational RBCs.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant,

Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by February 28, 2004 and sent to Katie Robertson, at the address listed above.

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

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

PROPOSED APPROVAL OF CLEANUP AT FORMER STANDARD BULK PLANT — HERMISTON UMATILLA COUNTY, OREGON

COMMENTS DUE: February 28, 2004

PROJECT LOCATION: 505 North First Place, Hermiston

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on results of site investigation performed at the former Standard Oil Bulk Plant site located at 505 North First Place in Hermiston, Oregon. The site is also proposed for de-listing from the Confirmed Release List (CRL).

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site including the installation and quarterly monitoring of four groundwater monitoring wells and the drilling of four soil borings. All compounds detected in soil samples collected during the drilling of the monitoring wells and soil borings were less than residential Risk Based Concentrations (RBCs). Groundwater is between 24 feet below ground surface (bgs) and 26 feet bgs. All compounds detected in groundwater have been less than residential RBCs for the last three quarterly sampling events

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by February 28, 2004 and sent to Katie Robertson, at the address listed above.

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

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

PROPOSED NO FURTHER ACTION FOR DESCHUTES VALLEY EQUIPMENT TERREBONNE, OR

COMMENTS DUE: March 1, 2004

PROJECT LOCATION: 710 F Ave., Terrebonne, OR 97760

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 interim removal measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: DVE has operated as a tractor and farm equipment sales and service business since the 1970's. Until early 2003, DVE discharged wash water from steam cleaning of tractors to a catch basin and then is conveyed by pipe to waste disposal well (drill hole) adjacent to the southeast corner of the shop building. A sample of standing water and a sample of sediment from the drill hole contained hazardous constituents. Levels of trichloroethene, cadmium, chromium and lead exceeded the screening levels that indicate further work is necessary. In March 2003, DVE discontinued the use of the drill hole and a new system was installed to collect and filter steam cleaning wash water prior to surface discharge.

OTHER NOTICES

The DVE parcel and surrounding properties are zoned Terrebonne Commercial Rural Zone and consist of commercial and residential properties. Due to the nearby water well uses, the beneficial use of the uppermost aquifer is considered drinking water. Four nearby water supply wells were sampled in May and June 2003 and did not contain and detectable constituents of concern.

A removal action was conducted in August 2003 and consisted of decommissioning the drill hole according to WRD and DEQ rules. The well casing and sediment was removed using air-rotary drilling equipment. The drilling was continued ten feet below the end of the casing to remove additional impacted rock material. All drill cuttings were collected at the surface, and disposed of at a permitted off site solid waste facility. Since all of the impacted material was removed and the drill was permanently decommissioned, DEQ is recommending a No Further Action determination for the DVE site.

COMMENT: The staff report recommending the proposed no further 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 March 4, 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 no further action will be made after consideration of public comments.

PROPOSED DELISTING FOR ERNIE GRAHAM OIL FACILITY

COMMENTS DUE: March 1, 2004

PROJECT LOCATION: 601 S.W. First Avenue, Canby, Oregon
PROPOSAL: As required by ORS 465.230 and OAR 340-122-077 and 078, the Department of Environmental Quality (DEQ) invites public comment on the proposed delisting of the Ernie Graham Oil facility. The Department recommends that the site be removed from DEQ's Confirmed Release List and Inventory of hazardous substance sites because it no longer meets the requirements for listing.

HIGHLIGHTS: The Ernie Graham Oil site is a bulk petroleum storage and distribution facility consisting of two above ground storage tank farms, associated petroleum loading and unloading racks, a warehouse and loading platform, and an oil water separator. Environmental investigations completed at the site in October 1997 and September 2000 identified releases of petroleum hydrocarbons to soil at the facility. The highest concentrations detected were 1,820 mg/kg gasoline in the main fuel tank farm, 9,860 mg/kg diesel in the main fuel tank farm, and 18,500 mg/kg oil in the smaller oil/used oil tank farm. Analysis for benzene, toluene, ethylbenzene, and xylenes (BTEX) and polynuclear aromatic hydrocarbons (PAHs) showed that some of these petroleum constituents were also present in soil at the main tank farm. Between January and March 2003 Phillips Petroleum Company (now ConocoPhillips) completed additional soil and

groundwater investigation with DEQ oversight under an August 24, 2001 letter agreement. The additional investigation confirmed that contaminants were below the most stringent risk-based standards for soil. Groundwater is approximately 35 feet below ground surface and chemical analyses of samples taken from five wells installed at the site suggest groundwater has not been impacted. DEQ is proposing a No Further Action determination for the site and delisting of the facility because current site conditions do not pose a risk to human health or the environment.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Gerald Gamolo at 503-229-6729. The DEQ contact for this project is Tom Roick, 503-229-5502. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 1, 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. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Office of Communication and Outreach at 503-229-5317. Additional information is also available at <http://www.deq.state.or.us/news/publicnotices/index.asp?program=Land%20Quality>.

DRUM CLEANUP UTS PORTSITE, PORT OF HOOD RIVER HOOD RIVER, OREGON

COMMENTS DUE: March 3, 2004

PROJECT LOCATION: UTS Portsite, Port of Hood River

The Oregon Department of Environmental Quality is proposing to issue a No Further Action determination following investigation and cleanup of abandoned drums at the UTS Portsite property, owned by the Port of Hood River. In June 2003, about 50 drums, their contents, and underlying soil were removed and disposed of at the Columbia Ridge Landfill in Arlington Oregon. The Department has determined that these actions have adequately addressed risk to human and ecological receptors. Public notification of the proposed No Further Action determination is hereby provided, in accordance with ORS 465.320.

HOW TO COMMENT: The project file, including a staff report recommending that a no further action determination be proposed, may be reviewed by any interested parties. To arrange for review of these files or to discuss this proposal, please call Bob Schwarz, DEQ project manager, at 541-298-7255 extension 30.

Upon written request by ten or more persons, or a group having ten or more members, a public meeting will be held to receive verbal comments.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed no further action determination will be published after consideration of public comments.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

The following agencies provide Notice of Proposed Rulemaking to offer interested parties reasonable opportunity to submit data or views on proposed rulemaking activity. To expedite the rulemaking process, many agencies have set the time and place for a hearing in the Notice. Copies of rulemaking materials may be obtained from the Rules Coordinator at the address and telephone number listed below.

Public comment may be submitted in writing directly to an agency or presented orally or in writing at the rulemaking hearing. Written comment must be submitted to an agency by 5:00 pm on the Last Day for Comment listed below. Written and oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

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

A public rulemaking hearing may be requested by 10 or more people or by an association with 10 or more members. Agencies must receive requests for a public rulemaking hearing in writing by the Last Date for Comment as printed in the Notice of Proposed Rulemaking in the Oregon Bulletin. If sufficient hearing requests are received by an agency, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

Board of Parole and Post-Prison Supervision Chapter 255

Stat. Auth.: ORS 144.050 & 144.140

Stats. Implemented:

Proposed Amendments: 255-080-0005

Last Date for Comment: 3-3-04

Summary: The amendment is necessary to establish the administrative review request process as it specifically relates to Orders of Supervision.

Rules Coordinator: Cindy Hanners

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

Telephone: (503) 945-0903

Stat. Auth.: ORS 144.050 & 144.140; Other Auth.: Baty v. Slater, 161 OR App 653 (1999) & OAR 213-005-0002

Stats. Implemented:

Proposed Repeals: 255-060-0014

Last Date for Comment: 3-3-04

Summary: The Oregon Court of Appeals ruling in Carl Baty v. Debra Slater, 61 OR App 653 (1999) rendered OAR 255-060-0014 invalid. Pursuant to OAR 255-060-0014, an offenders' active supervision did not begin until they were released into the community. The ruling in Baty is that the term of active supervision commences upon completion of the prison term.

Rules Coordinator: Cindy Hanners

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

Telephone: (503) 945-0903

Stat. Auth.: ORS 144.050, 144.140 & 181.585

Stats. Implemented:

Proposed Amendments: 255-060-0011

Last Date for Comment: 3-3-04

Summary: The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.

Rules Coordinator: Cindy Hanners

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

Telephone: (503) 945-0904

Board of Pharmacy Chapter 855

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Proposed Amendments: 855-031-0015, 855-031-0045

Last Date for Comment: 2-21-04

Summary: Revises internship regulations to allow a Preceptor to designate a non-pharmacist to be responsible for direct supervision of an intern with prior approval from the Board.

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St. - Suite 425, Portland, OR 97232

Telephone: (503) 731-4032, ext. 223

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Proposed Amendments: 855-021-0005, 855-021-0010, 855-021-0025, 855-021-0030, 855-021-0050

Proposed Repeals: 855-021-0015, 855-021-0035

Last Date for Comment: 2-21-04

Summary: Modifies and clarifies requirements for Pharmacists continuing professional education.

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St. - Suite 425, Portland, OR 97232

Telephone: (503) 731-4032, ext. 223

Construction Contractors Board Chapter 812

Date:

2-24-04

Time:

11-11:30 a.m.

Location:

West Salem Roth's IGA
Santiam Room

Hearing Officer: Jim Fairchild

Stat. Auth.: ORS 87.093, 183.310-183.500, 293.445, 670.310, 701.055, 701.145, 701.235, 701.280, 701.350, 701.992 & OL 2003, Ch. 778; Other Auth.: OL 2003, Ch. 294, OL 2003, Ch. 610 & OL 2003, Ch. 778

Stats. Implemented: ORS 25.278, 87, 87.093, 183, 183.310, 183.335, 183.341, 183.415, 183.460, 183.470, 183.500, 192.430, 670.310, 701, 701.055, 701.075, 701.102, 701.125, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.180, 701.235, 701.250, 701.252, 701.280, 701.350, 701.355, OL 2003, Ch. 294, OL 2003, Ch. 610 & OL 2003, Ch. 778

Proposed Adoptions: 812-001-0022

Proposed Amendments: 812-001-0000, 812-001-0015, 812-001-0020, 812-003-0015, 812-004-0110, 812-004-0250, 812-004-0440, 812-004-0535, 812-004-0540, 812-004-0550, 812-008-0050, 812-009-0100, 812-009-0120

Last Date for Comment: 2-24-04, 11:30 a.m.

Summary: OAR 812-001-0000 is amended to include sending rule notices by email to interested parties who prefer to receive the rule notices by email rather than mail.

- OAR 812-001-0015 is amended to allow a party who voluntarily paid for a four-year license to obtain a refund of a portion of the second two-year fee within the first two years of the license period if requested.

- OAR 812-001-0020 is amended to adopt the revised form "Notice of Compliance with Homebuyer Protection Act (HPA)". The form was revised to make it more user friendly; and to adopt the revised form "Information Notice to Property Owners About Construction Responsibilities" that contains obsolete phone numbers that need to be corrected.

NOTICES OF PROPOSED RULEMAKING

• OAR 812-001-0022 is adopted to set out the requirements regarding who is required to give the “Notice of Compliance with Homebuyer Protection Act (HPA)” and when the notice must be given because it is not clear from the legislation.

• OAR 812-003-0000 is amended to reflect the fee increase and change to a flat fee structure effective July 1, 2004. The 2003 legislature authorized a fee increase effective July 1, 2003. The agency delayed implementation of a fee increase until January 1, 2004; however, the Board determined at their December 2, 2003 Board meeting to further delay a fee increase due to increased revenue receipts. The rules were then repealed that would have implemented a fee increase effective January 1, 2004. This rule filing to implement the original fee increase with an effective date of July 1, 2004, which reflects the one year delay in implementation of a fee increase and to require a flat reinstatement fee for all categories rather than the current two-tiered system which can be confusing.

• OAR 812-003-0015 is amended to comply. Oregon and federal law require licensing agencies to collect Social Security numbers from individual licensees for purposes of child support enforcement. See ORS 25.750 to 25.785. Recently, the legislature enacted Chapter 610, Oregon Laws 2003 (HB 2783), which amends ORS 25.785 to provide that a licensing agency “may accept a written statement from an individual who has not been issued a Social Security number***.” This provides an avenue for compliance for persons who may not have a Social Security number.

• OAR 812-004-0110 is amended to provide the processing fee under ORS 701.147 (as amended by Chapter 294, Oregon Laws 2003) only applies to residential claims, to require the claimant applying for a waiver of the claim processing fee to certify that the information is true, and provides that the fee doubles if claimant provides false information on an application of waiver of the claim processing fee.

• OAR 812-004-0250 is amended to provide for reimbursement of the claim processing fee as required by ORS 701.147.

• OAR 812-004-0440 is amended to clarify when a contractor receives notice of a claim for purposes of ORS 701.180 (regarding contracts with mediation or arbitration agreements), which was made necessary by the pre-claim notice provisions under ORS 701.147 as amended by the 2003 legislature.

• OAR 812-004-0535, 812-004-0540, 812-004-0550, 812-009-0100, and 812-009-0120 are amended to clarify the intent of the rules and make them more readable.

• OAR 812-008-0050 is amended to provide a more reasonable testing timeline for applicant’s taking the home inspector test.

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

Rules Coordinator: Cathy Heine
Address: Construction Contractors Board, 700 Summer St. NE, Ste. 300, Salem, OR 97310
Telephone: (503) 378-4621, ext. 4077

**Department of Administrative Services,
 Human Resource Services Division
 Chapter 105**

Date:	Time:	Location:
2-20-04	10 a.m.	DAS Conf. Rm. A Salem, OR

Hearing Officer: Shelli Honeywell
Stat. Auth.: ORS 184.340 & 240.145
Stats. Implemented: ORS 240.010 & 240.306
Proposed Amendments: 105-040-0030
Last Date for Comment: 2-20-04, 5 p.m.

Summary: Language was added to ensure system programming is consistent with other HRSD administrative rules and State policies as it relates to the use of salary range versus salary rate in determining when to remove an applicant’s name from various applicant lists. The need to add this language immediately is to authorize and support a system change that will ensure that as agencies daily disposition

applicants from applicant lists they are not incorrectly removing applicants from other recruitment lists.

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

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

Stat. Auth.: ORS 240.306(5), ORS 240.145(3) & ORS 240.250
Stats. Implemented: ORS 240.145(3), 240.250, 240.306(1)(2)(5) (6), 240.311 & 240.321(2)

Proposed Amendments: 105-040-0050

Proposed Repeals: 105-040-0050(T)

Last Date for Comment: 2-21-04, 4 p.m.

Summary: Language was added for clarification to ensure that agencies understand all of the criteria before an agency head may make a direct appointment. Revised language brings the OAR in line with statutory requirements by ensuring that agencies understand they must meet at least one of the criteria describing the circumstances under which a direct appointment may be made, as well as the criteria regarding the minimum qualifications of the candidate. Reference to executive service positions was removed as the applicability of this rule only extends to classified and management services positions.

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

**Department of Agriculture
 Chapter 603**

Date:	Time:	Location:
2-24-04	10-11 a.m.	Ag Building 635 Capitol St. NE Conf. Rm. B Salem, OR

Hearing Officer: Chris Kirby
Stat. Auth.: ORS 618.031 & 646.957
Stats. Implemented: ORS 618.031 & 646.957
Proposed Amendments: 603-027-0395, 603-027-0640
Proposed Repeals: 603-027-0405
Last Date for Comment: 2-24-04

Summary: The proposed rulemaking outlines general housekeeping and proposes to repeal OAR 603-027-0395(6), 603-027-0405, 603-027-0640(1)(b), and 603-027-0640(1)(c). These sections pertain to protecting scales that are used to sell LPG from wind and weather effects, gasoline blended with alcohol definitions and labeling requirements, and motor fuel dispensers with modified quantity and price indicators. These particular sections are either no longer applicable to the agency’s weights and measures program or are covered by other regulations.

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

Rules Coordinator: Sherry Kudna
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532
Telephone: (503) 986-4619

Date:	Time:	Location:
3-9-04	6 p.m.	OSU Extension Office 3328 Vandenberg Rd. Klamath Falls, OR 97603

Hearing Officer: Stephanie Page
Stat. Auth.: ORS 561.190, 561.191, 561.400 & 568.900-568.933;
 Other Auth.: OAR 603-090
Stats. Implemented: ORS 568.900-568.933

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 603-095-3900, 603-095-3920, 603-095-3940, 603-095-3960

Last Date for Comment: 3-15-04

Summary: The rules effectuate the implementation of the Lost River Subbasin Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et. seq.

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

Rules Coordinator: Sherry Kudna

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

Telephone: (503) 986-4619

.....

Date:	Time:	Location:
2-25-04	11 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Brant Searle

Stat. Auth.: ORS 570.305 & 571.220

Stats. Implemented: ORS 561.190

Proposed Adoptions: 603-054-0027

Last Date for Comment: 3-3-04

Summary: This rule requires recipients of imported tree and shrub nursery stock to notify the Oregon Department of Agriculture. Notification can be via mail, FAX or e-mail and must occur no later than two business days after its arrival. ODA will contact nurseries within one business day of receipt of notification if the imported nursery stock must be held for inspection.

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

Rules Coordinator: Sherry Kudna

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

Telephone: (503) 986-4619

.....

Date:	Time:	Location:
3-8-04	1 p.m.	OSU Extension Office 498 SE Lynn Blvd. Prineville, OR 97754

Hearing Officer: Stephanie Page

Stat. Auth.: ORS 561.190, 561.191, 561.400 & 568.900-568.933;
Other Auth.: OAR 603-090

Stats. Implemented: ORS 568.900-568.933

Proposed Adoptions: 603-095-3400, 603-095-3420, 603-095-3440, 603-095-3460

Last Date for Comment: 3-15-04

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

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

Rules Coordinator: Sherry Kudna

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

Telephone: (503) 986-4619

.....

Department of Community Colleges and Workforce Development Chapter 589

Stat. Auth.: SB 272

Stats. Implemented:

Proposed Adoptions: 589-020-0230

Last Date for Comment: 3-19-04

Summary: Senate Bill 272 established the Advanced Technology Education and Training Fund and directs the Department of Community Colleges and Workforce Development to establish by rule a process for making grants for the provision of advanced technology education and training. This rule establishes a process for administering grants to support the development and implementation of

public-private partnership opportunities in all business and industry sectors in communities throughout Oregon.

Rules Coordinator: Laura J. Roberts

Address: Department of Community Colleges and Workforce Development, 255 Capitol St. NE, Salem, OR 97310-0001

Telephone: (503) 378-8648, ext. 238

.....

Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

Date:	Time:	Location:
3-5-04	10 a.m.	Labor & Industries Bldg. 2nd Fl., Rm. 250 350 Winter St. NE Salem, OR 97301-3882

Hearing Officer: Marilyn Schuster

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

Stats. Implemented: ORS 654.001-654.295

Proposed Amendments: 437-007-0220, 437-007-0600, 437-007-0605, 437-007-0615, 437-007-0650, 437-007-0655, 437-007-0660, 437-007-0690, 437-007-0725

Last Date for Comment: 3-10-04

Summary: Oregon OSHA proposes to amend existing standards in Division 7, Forest Activities. Many of the changes are in response to a federal mandate to clarify the requirements for: first aid and CPR; wire rope inspections; and controlling hazardous energy. Additional clarifications are based on industry requests.

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

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

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) and 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Proposed Amendments: 437-002-0120

Proposed Repeals: 437-002-0133

Last Date for Comment: 3-10-04

Summary: On December 31, 2003, Federal OSHA published in the Federal Register withdrawal of its proposed Occupational Exposure to Tuberculosis standard. In the same Federal Register, OSHA also published a revocation of 29 CFR 1910.139 Respiratory Protection for M. Tuberculosis. The general industry Respiratory Protection Standard, 1910.134 will be applied to respiratory protection against TB.

Oregon OSHA proposes to repeal 1910.139 Respiratory Protection for M. Tuberculosis, in Division 2/I, Personal Protective Equipment. Oregon initiated rule 437-002-0133 Oregon Rule for Air Quality in Respirators, will also be repealed.

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 Corrections Chapter 291

Stat. Auth.: ORS 179.040, 421.500-421.512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500-421.512, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-062-0100 - 291-062-0160

Proposed Repeals: 291-062-0010 - 291-062-0080

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 3-15-04

Summary: The 2003 Oregon Legislature enacted a law that requires the department to establish an alternative incarceration program that includes intensive addiction intervention and treatment. These rule amendments are necessary for the establishment of the criteria for inmate eligibility and selection for participation in the program, as well as suspension and removal. The eligibility and selection requirements have been merged with the requirements for participation in another alternative incarceration program already established within the department.

Rules Coordinator: Carolyn Schnoor

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

Telephone: (503) 945-0933

Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
3-19-04	8 a.m.	Gold Beach Resort 29232 Ellensburg Cove Gold Beach, OR 97444

Hearing Officer: Staff

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450-560.465

Proposed Adoptions: Rules in 635-006

Proposed Amendments: Rules in 635-006

Proposed Repeals: Rules in 635-006

Last Date for Comment: 3-19-04

Summary: Require applicants for developmental fisheries permits for the hagfish fishery to submit a business plan at the time of application. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

Rules Coordinator: Mike Lueck

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

Telephone: (503) 947-6033

Department of Forestry Chapter 629

Date:	Time:	Location:
2-19-04	2 p.m.	Oregon Dept. of Forestry 3501 E 3rd St. Prineville, OR 97754

Hearing Officer: Richard Gibson

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

Stats. Implemented: ORS 447.225

Proposed Amendments: 629-041-0515

Last Date for Comment: 2-19-04

Summary: OAR 629-041-0515 describes the boundary of the Central Oregon Forest Protection District. The current boundary description contains minor errors and omissions. **The proposed amendment will correct the errors and remove the omissions.** The amendments will not change the actual location of the boundary. No lands will be added to the forest protection district and no lands will be withdrawn from the district, as a result of this action. Questions specific to the proposed rule amendment may be directed to Richard Gibson, 503-945-7440.

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

Rules Coordinator: Gayle Birch

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

Telephone: (503) 945-7210

Department of Human Services, Child Welfare Programs Chapter 413

Date:	Time:	Location:
3-16-04	9 a.m.	Rm. 251 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005; Other Auth.: HB 5030, 2003 & OAR 125-020-0220

Stats. Implemented: ORS 279.727 & 279.729

Proposed Amendments: 413-330-0900, 413-330-0910, 413-330-0920, 413-330-0930, 413-330-0940, 413-330-0950, 413-330-0970, 413-330-0980, 413-330-0990, 413-330-1000, 413-330-1010

Proposed Repeals: 413-330-0960

Last Date for Comment: 3-16-04

Summary: The 2003 Legislative Session, DHS Budget Authorization (HB 5030) authorized dollars to implement the System of Care Needs Based Service program providing flexible funds to the Department to meet the individual needs of children and their families in order to promote safety, permanency and well-being. These services are provided by the Department under an agreement between the Oregon Department of Human Services and the Juvenile Rights Project, Inc. These administrative rules describe how, when and who may use and authorize the use of the System of Care Short Form Personal Services Contract for the delivery of System of Care-funded individualized services to children and families.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

Date:	Time:	Location:
3-16-04	8:30 a.m.	Rm. 251 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

Proposed Adoptions: 413-330-0097, 413-330-0098

Proposed Amendments: 413-330-0085, 413-330-0087, 413-330-0090, 413-330-0095

Last Date for Comment: 3-16-04

Summary: These Criminal History Checks for System of Care Contractors rules set the parameters for checking for and evaluating criminal history of individuals seeking to contract with DHS for the purpose of providing personal services to child welfare clients.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Date:	Time:	Location:
2-17-04	10:30 a.m.-12 p.m.	Rm. 137B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.110 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0030, 410-121-0040

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 2-17-04, 5 p.m.

Summary: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rules 410-121-0030 will be amended to add Calcium Channel Blockers to the (PMPDP) Practitioner-Managed Prescription Drug (PDL) Plan Drug List drug classes and update the Statin class per annual review. 410-121-0040 will be amended to add FluMist to prior authorization (PA) requirements per the recommendations of the Drug Utilization Review (DUR) Board.
**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

Telephone: (503) 945-6927

Stat. Auth.: ORS 409.410 & 409.420

Stats. Implemented: ORS 419C.443 & 135.917

Proposed Repeals: 410-009-0000, 410-009-0005, 410-009-0010, 410-009-0015, 410-009-0020, 410-009-0025, 410-009-0030, 410-009-0035, 410-009-0040

Last Date for Comment: 4-2-04

Summary: The purpose of this change is to repeal the rules that govern the education and treatment services provided to those individuals who enter into a marijuana diversion agreement with the courts. Since the creation of these rules, the outpatient treatment rule has been revised to assure that individuals receive the appropriate level of care and duration of treatment based on clinical needs and individual progress. These individuals would be referred and provided treatment within those programs that have a letter of approval to provide outpatient treatment services. For this reason this rule is no longer needed and is being repealed.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

Department of Human Services, Public Health Chapter 333

Date:	Time:	Location:
3-11-04	1-4 p.m.	DHS Facilities Planning & Safety Bldg. Conference Rm. 3420 Cherry Ave. NE Keizer, OR 97303

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 413 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268 & 448.273

Proposed Amendments: 333-061-0020, 333-061-0070, 333-061-0071, 333-061-0072, 333-061-0073, 333-061-0074

Last Date for Comment: 3-11-04, 5 p.m.

Summary: 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.

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

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

Date:	Time:	Location:
2-24-04	1:30 p.m.	800 NE Oregon St. Rm. 120B Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 433.810

Stats. Implemented: ORS 433.800-433.830

Proposed Amendments: 333-055-0015, 333-055-0030, 333-055-0035

Last Date for Comment: 2-24-04, 5 p.m.

Summary: Amend rules relating to programs to treat allergic response or hypoglycemia. These rules modify the content of an emergency supply of epinephrine available by prescription to certified individuals who have completed emergency epinephrine training. Language is also updated to reflect change in agency name.

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

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

Date:	Time:	Location:
2-24-04	9:30 a.m.	800 NE Oregon St. Rm. 120B Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 192.531-192.549 & SB 618 (LS 2003)

Stats. Implemented: ORS 192.531-192.549, 649 & OL 2003, Ch. 86, Sec. 5

Proposed Adoptions: 333-025-0100, 333-025-0105, 333-025-0110, 333-025-0115, 333-025-0120, 333-025-0125, 333-025-0130

Proposed Repeals: 333-024-0560

Proposed Renumberings: 333-024-0520 to 333-025-0145, 333-024-0530 to 333-025-0150

Proposed Ren. & Amends: 333-024-0500 to 333-025-0135, 333-024-0510 to 333-025-0140, 333-024-0540 to 333-025-0155, 333-024-0550 to 333-025-0160

Last Date for Comment: 2-24-04, 5 p.m.

Summary: Revises rules relating to genetic information and privacy. Adds to and modifies existing definitions. Establishes Institutional Review Board registry and guidelines for review of research proposals involving genetic materials and information. Establishes requirements for informed consent related to genetic research. Establishes requirement for notification and opt-out provision for anonymous research using genetic material. Provide guidelines for research subject recontact. Replaces disclosure form. Renumbers and amends existing rules to conform to new legislation and federal privacy law.

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

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
3-2-04	10 a.m.	Rm. 251 500 Summer St. NE Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.816, 418.100; Other Auth.: Section 1115 of the Social Security Act; USDA Food and Nutrition Services, Administrative Notices 04-04 and 04-09; 45 CFR 235.110; HB 3629 (2003); State Medicaid Director Letter #02-008 from the Centers for Medicare and Medicaid Services

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.630, 411.635, 411.660, 411.700, 414.025, 418.100

Proposed Amendments: 461-110-0350, 461-115-0015, 461-135-0301, 461-135-0400, 461-135-0401, 461-135-1130, 461-135-1220, 461-135-1230, 461-135-1235, 461-145-0190, 461-155-0150, 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0560, 461-160-0620, 461-195-0531, 461-195-0551, 461-195-0601, 461-195-0621

Last Date for Comment: 3-2-04

Summary: Rule 461-461-110-0350 is being amended to exempt a child care provider from being counted in the filing group when a child is in full time care due to their caretaker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules 461-115-0015, 461-135-0400 and 461-135-0401 are being amended to reinstate a student child care subsidy program authorized by the 2001-2003 Legislature. Because funding is limited and the number of student parents who may qualify is so large, a random selection and waiting list process is being established in rule. To qualify, students must be enrolled for at least 12 credits in a 2 or 4 year college eligible for federal financial aid. To remain in the program, students must earn 36 credits annually.

Rule 461-135-0301 is being amended to add new language that allows DHS to re-open the Emergency Assistance (EA) program.

Rule 461-135-1130 is being amended to clarify that an Oregon Health Plan (OHP) disqualification period for not paying a premium on time starts the first of the month after the notice period ends. The clarification ensures that the disqualification policy will be consistently applied to all clients required to serve a penalty.

Rule 461-135-1220 is being amended to allow the Department additional time to determine eligibility for TA-DVS from 8 working hours up to 16 working hours.

Rule 461-135-1230 is being amended to state that more than one eligibility period for TA-DVS within a 12-month period must be jointly approved by the Department's field office and central office.

Rule 461-135-1235 is being amended to correct "second" business day to align with the proposed amendment in rule 461-135-1220.

Rule 461-145-0190 is being amended to exclude Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands as income for the Food Stamp program.

Rule 461-155-0150 is being amended to add a monthly limit to child care subsidy when a child is in full-time care due to their caretaker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291 and 461-155-0295 are being amended to reflect the annual increase in the federal poverty levels when those levels are published in the Federal Register. These rules includes standards/allowances based on the federal poverty levels.

Rule 461-160-0560 is being amended to include the federal language under the state can claim federal matching funds to purchase certain items for individuals who are being relocated from a nursing facility to home setting. State Medicaid Director Letter #02-008 from the Centers for Medicare and Medicaid Services provides for the availability of federal funds for those served under a home and community based waiver, if they are being relocated as part of comprehensive plan to provide services at home.

Rule 461-160-0620 is being amended to clarify that a client must have a cost for utilities separate from their shelter in order to allow

the FS program's full standard utility allowance in the community spouse income allowance calculation.

Rule 461-195-0531 is being amended to include specific language about when to establish overpayments in TA-DVS cases.

Rule 461-195-0551 is being amended to include a distraint warrant as a method to collect a liquidated claim. This method was added with the passage of HB 3629.

Rule 461-195-0601 is being amended to include a specific section on Temporary Assistance for Domestic Violence Survivor's (TA-DVS). Current rule does not separate TA-DVS from TANF. TA-DVS will only pursue intentional program violation (IPV) in TA-DVS cases when coercion from the abuser wasn't present.

Rule 461-195-0621 is being amended to include specific language around the TA-DVS program. It includes language around liability in repayment situations and actions for staff to take if a person who has been found responsible for a IPV applies for TA-DVS in the future. Current rule language does not provide IPV information in the TA-DVS program.

**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

Date:	Time:	Location:
3-2-04	1:30 p.m.	Rm. 251 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060, 411.070, 411.710, 411.816, 414.042, 414.342, 418.100; Other Auth.: 2003 Legislative Session, DHS Budget Authorization (HB 5030)

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.710, 411.816, 414.042, 414.342, 418.040, 418.100

Proposed Amendments: 461-101-0010, 461-110-0390, 461-110-0630, 461-110-0750, 461-120-0125, 461-120-0345, 461-120-0510, 461-125-0510, 461-135-0700, 461-135-0701, 461-135-0705, 461-140-0120, 461-140-0130, 461-145-0040, 461-145-0050, 461-145-0150, 461-145-0320, 461-145-0360, 461-145-0530, 461-155-0010, 461-155-0210, 461-155-0526, 461-155-0551, 461-160-0015, 461-160-0060, 461-160-0500, 461-160-0550

Proposed Repeals: 461-125-0600, 461-125-0610, 461-125-0650, 461-125-0660, 461-125-0690, 461-125-0890, 461-125-0910, 461-125-0930, 461-160-0510, 461-160-0520

Last Date for Comment: 3-2-04

Summary: Rules governing the General Assistance program are being amended or repealed because the State of Oregon's legislature approved funding to restore a limited version of the former General Assistance program. This program provides cash assistance to individuals with severe physical or mental impairments who are waiting for their Supplemental Security Income (SSI) benefits to be approved by the Social Security Administration (SSA). The General Funds expenditures used to provide a monthly cash payment for indigent individuals with disabling conditions who meet the disability and financial requirements for GA are reimbursed to the State when the client becomes eligible for SSI.

Rule 461-120-0125 is also being amended to conform with the federal regulations regarding non-citizens. Specifically, non-citizens who meet the disability criteria for Supplemental Security Income (SSI) benefits are terminated from SSI after seven years if they have not attained citizenship status.

Rule 461-135-0700 is also being amended to allow GA for couples if one meets the impairment criteria for the GA program, and the spouse has a pending Title II claim and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

NOTICES OF PROPOSED RULEMAKING

Rule 461-155-0526 is also being amended to clarify that Community Transition Services payments are not to be used for temporary housing or medical supplies. In addition, payments under this rule are only appropriate when the client is setting up housing in their own home or apartment.

**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,
Vocational Rehabilitation Services
Chapter 582**

Date:	Time:	Location:
2-20-04	1 p.m.	Human Resources Bldg. 500 Summer St. NE Room 137-A-B Salem, OR

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 344.530; Other Auth.: 34 CFR 361.13(c) & 34 CFR 361.38

Stats. Implemented: ORS 344.530, 344.540(1) & 344.600

Proposed Adoptions: 582-030-0025

Proposed Amendments: 582-030-0000, 582-030-0005, 582-030-0008, 582-030-0010, 582-030-0020, 582-030-0030, 582-030-0040

Last Date for Comment: 2-23-04

Summary: Amends rules on confidentiality of client information and release of information. Identifies purposes of the rules. Amends definitions used in this division. Clarifies and amends rules on billing policy, program use, disclosure, subpoenas, and written consent exceptions to assure consistency with DHS administrative rules and policies, state and federal statutes, and federal regulations.

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, E87, Salem, OR 97301

Telephone: (503) 945-6734

.....
**Department of Justice
Chapter 137**

Stat. Auth.: ORS 25.243, 25.260, 25.265, 25.243, 180.380, 409.021, 416.455 & 180.345

Stats. Implemented: ORS 25.080, 25.260, 25.265, 25.243, 25.287, 107.135, 127.005, 411.320 & 416.425

Proposed Adoptions: 137-055-1145, 137-055-3430

Proposed Amendments: 137-055-1140, 137-055-1320, 137-055-1360, 137-055-1600, 137-055-2140, 137-055-3300, 137-055-3420, 137-055-3480

Proposed Repeals: 137-055-1340

Last Date for Comment: 3-9-04

Summary: The proposed adoption of 137-055-1145 and amendment to 137-055-1140 is to reflect federal and state regulations on automated access to confidential child support information. The proposed amendments to OAR 137-055-1320 and 137-055-1360 and repeal of 137-055-1340 are to make the rules consistent with current regulations and policy direction from the Federal Office of Child Support Enforcement. The proposed amendments to OAR 137-055-1600 are to expand the reasons a Child Support Program grievance may be found to be without merit to include actions taken according to written policy or procedure and complaints about actions which have not been taken when the case record reflects otherwise. The proposed amendments to OAR 137-055-2140 are to clarify agency delegations

of authority to the Office of Administrative Hearings. The proposed amendments to OAR 137-055-3300 and 137-055-3480 are to clarify that provisions concerning modification because of incarceration do not apply if the reason for incarceration is failure to pay support. Changes to 137-055-3420 and adoption of 137-055-3430 are to clarify the differences between modification due to periodic review and substantial change of circumstances.

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

Rules Coordinator: Shawn Irish

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

Telephone: (503) 986-6240

.....
**Department of Public Safety Standards and Training
Chapter 259**

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.653, 181.665, 181.652 & 181.667

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.653, 181.665, 181.652 & 181.667

Proposed Amendments: 259-008-0005, 259-008-0011, 259-008-0020, 259-008-0025, 259-008-0030, 259-008-0060, 259-008-0065, 259-008-0066

Proposed Repeals: 259-045-0010

Last Date for Comment: 2-28-04

Summary: Three-year rulemaking review of Division 8. Adds definition for leave of absence combining all but "Special Leave of Absence" into one category; adds minimum standards for telecommunicators and EMD's; changes "officer" to "public safety officer." Changes education "points" to education "credits." Deletes rule section listing current forms. Minor housekeeping changes.

Proposed rule can be viewed on DPSST web site at www.dpsst.state.or.us.

Rules Coordinator: Mary Gaines

Address: Department of Public Safety Standards and Training, 550 N Monmouth Ave., Monmouth, OR 97361

Telephone: (503) 378-2100, ext. 2367

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-012-0035

Last Date for Comment: 2-28-04

Summary: Amend rule to allow a student attending the academy who is dismissed, suspended or otherwise disciplined due process.

Proposed rules can be viewed at web site: www.dpsst.state.or.us.

Rules Coordinator: Mary Gaines

Address: Department of Public Safety Standards and Training, 550 N Monmouth Ave., Monmouth, OR 97361

Telephone: (503) 378-2100, ext. 2367

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

Date:	Time:	Location:
2-18-04	2 p.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Liz Woods

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

Stats. Implemented: ORS 807.050, 807.062, 807.110, 807.150, 807.160, 807.220, 807.230, 807.280 & 807.400

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

Last Date for Comment: 2-20-04

Summary: These rules outline acceptable proof of an applicant's identity, age and residence address when applying to DMV for an original, renewal or duplicate driver permit, driver license or identification card. Because of the tremendous problem identity theft and

NOTICES OF PROPOSED RULEMAKING

use of fraudulently obtained documents present nationwide, including a threat to the nation's security, and because a driver license or identification card are the primary forms of identification, these proposed rule amendments are intended to provide DMV with the documentation necessary to verify the identity, age and residence of a person issued a driver permit, driver license or identification card.

Originally a hearing on these amendments was scheduled for January 7, 2004. State offices were closed that day due to inclement weather; therefore, a second notice is being filed to announce the rescheduled hearing.

Text of proposed and recently adopted ODOT rules can be found at the 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

.....
**Department of Transportation,
 Highway Division
 Chapter 734**

Stat. Auth.: ORS 184.616, 184.619 & 810.180

Stats. Implemented: ORS 810.180

Proposed Amendments: 734-020-0010

Last Date for Comment: 3-24-04

Summary: This rule currently establishes the specific locations of 65 MPH speed zones on interstate highways. House Bill 2662 amended ORS 810.180, setting the designated speed on interstate highways at 65 MPH. HB 2661 also gave ODOT authority to establish by rule designated speeds on any specified section of interstate highway if the department determines that speed limits established by law are greater or less than is reasonable or safe under the conditions that exist with respect to that section of the interstate highway. The rule is being rewritten in its entirety to establish a procedure for establishing speed zones by rule on interstate highways as directed by ORS 810.180(3) as revised by Chapter 819, Oregon Laws 2003. The rule will specify the procedure for ODOT to follow when establishing speeds other than the maximum speed set in Chapter 819, Oregon Laws 2003 (HB 2661) for interstate highways. The procedure for establishing speed zones on interstate highways must be in place before ODOT can begin the process of determining if speeds should be higher or lower than the speed designated by law on certain sections of the interstate highways.

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

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

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

Stat. Auth.: ORS 184.616, 184.619 & 823.011

Stats. Implemented: ORS 760, 823.061, 824.086 & 824.090

Proposed Repeals: 741-050-0010, 741-050-0020, 741-050-0030, 741-050-0040, 741-050-0050, 741-050-0060, 741-050-0070, 741-050-0080, 741-050-0090, 741-050-0100, 741-050-0110, 741-050-0120, 741-050-0130, 741-050-0140, 741-050-0150, 741-050-0160, 741-050-0170, 741-050-0180, 741-050-0190, 741-050-0200, 741-050-0210, 741-050-0220, 741-050-0230, 741-050-0240, 741-050-0250, 741-050-0260, 741-050-0270, 741-055-0010

Last Date for Comment: 2-23-04

Summary: The Department is preempted under federal law from procedures for regulation of Intrastate Railroad Rates. This rule-making repeals those rules.

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

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

Stat. Auth.: ORS 823.011, 823.061, 824.086 & 824.090

Stats. Implemented: ORS 824.061, 824.086 & 824.090

Proposed Amendments: 741-520-0010

Last Date for Comment: 2-23-04

Summary: This rule covers the readoption of federal statutes relating to hazardous materials and wastes being transported by railroads in and through Oregon. The proposed amendments are necessary to ensure Oregon's railroad hazardous materials rule is current with national standards.

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

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

.....
**Department of Veterans' Affairs
 Chapter 274**

Stat. Auth.: ORS 86.240, 86.245, 406.030, 407.115, 407.169 & 407.275

Stats. Implemented: ORS 406.030 & 407.275

Proposed Amendments: 274-020-0388

Proposed Repeals: 274-020-0388(T)

Last Date for Comment: 2-23-04

Summary: This rule is being amended to include the option which will allow the borrower of a daily simple loan, with an interest rate of less than 7%, to request that the Director advance funds for the payment of property taxes on loans.

The language in this rule is also being amended to modify the requirement that a borrower must have 30% equity in the security before they are allowed to directly pay their own property taxes and insurance. The revision shall require that the borrower need only have 20% equity prior to requesting to directly pay their own property taxes.

Rules Coordinator: Charles E. Gehley
Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285
Telephone: (503) 373-2142

.....
**Division of State Lands
 Chapter 141**

Date:	Time:	Location:
2-23-04	3-5 p.m. & 7-9 p.m.	Wilsonville Public Library Rose Rm. 8200 SW Wilsonville Rd. Wilsonville, OR
2-24-04	3-5 p.m. & 7-9 p.m.	Florence Event Center 715 Quince St. Florence, OR
2-25-04	3-5 p.m. & 7-9 p.m.	Jackson Co. Courthouse Auditorium 10 South Oakdale Medford, OR
3-1-04	3-5 p.m. & 7-9 p.m.	Dept. of State Lands Bend Office 20300 Empire Ave. #B-1 Bend, OR
3-2-04	3-5 p.m. & 7-9 p.m.	Agriculture Center Conf. Rm. 10507 North McAlister Rd. La Grande, OR

Hearing Officer: John Lilly or designee

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 196.800-196.990, 196.600-196.692, OL 2003, Ch. 253, OL 2003, Ch. 800 & OL 2003, Ch. 738

Stats. Implemented: OL 2003, Ch. 253, OL 2003, Ch. 800 & OL 2003, Ch. 738

Proposed Adoptions: 141-085-0450

Proposed Amendments: Rules in 141-085, 141-089, 141-090, 141-102

Last Date for Comment: 3-12-04

Summary: Amendments to these rules are aimed: at accommodating changes in law (HB 2899, HB 2011 and SB 311 from the 2003 Session); responding to initiatives to streamline the permitting process to create certainty and consistency and to conserve the water resources of the state; and addressing recent contested case orders of the Director and courts decisions.

The amendments include but are not limited to: new General Authorization for Oregon Department of Transportation bridge projects; changes to definition of certain terms; new expedited procedures for projects associated with certain industrial or traded sector sites under consideration for "project ready" certification or as "opportunity sites."

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

Rules Coordinator: Nicole Kielsmeier

Address: Division of State Lands, 775 Summer St. NE, Ste 100, Salem, OR 97301

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

Oregon Department of Education Chapter 581

Date:	Time:	Location:
2-17-04	3 p.m.	Public Service Bldg. 255 Capitol St. NE Salem, OR Rm. 251-A

Hearing Officer: Mike Reed

Stat. Auth.: ORS 326.051 & 339.430

Stats. Implemented: ORS 339.430

Proposed Amendments: 581-021-0035

Last Date for Comment: 2-17-04

Summary: The language in the current rule is unclear as to the ability of the State Board of Education to hear appeals of decisions regarding eligibility from local school district boards. The amendments proposed here would make clear that the State Board's authority is limited to appeals of decisions of interscholastic activity organizations and does not extend to decisions of local school district boards.

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

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

Rules Coordinator: Debby Ryan

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

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

Oregon Public Employees Retirement System Chapter 459

Date:	Time:	Location:
2-23-04	10:30 a.m.	Conference Rm. Archives Bldg. 800 Summer St. NE Salem, OR

Hearing Officer: Yvette Elledge

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

Stats. Implemented: OL 2003 Ch. 733

Proposed Adoptions: 459-080-0200

Last Date for Comment: 4-9-04

Summary: A new administrative rule is needed to implement and clarify provisions of Enrolled HB 2020, which establishes the Oregon Public Service Retirement Plan (OPSRP). The proposed new rule specifies that contributions to the OPSRP Individual Account Program (IAP) will not be posted to an individual's account nor adjusted for investment earnings or losses until both the funds and the attendant records (name, pay period, etc.) are received by PERS from the individual's employer. Thereafter, the account will be adjusted monthly to reflect any net earnings or losses and to pay reasonable administrative expenses. Upon withdrawal, the account value will be determined as of the first of the next month after the withdrawal request is received.

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

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

Rules Coordinator: Yvette S. Elledge

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

Telephone: (503) 603-7713

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238 & OL 2003 Ch. 3 & 67 (Enrolled HB 2001 & 2003)

Proposed Adoptions: 459-007-0005

Last Date for Comment: 3-1-04

Summary: This new rule under Division 007, Earnings and Interest Distribution, is necessary to conform with the provisions of HB 2001, as amended by HB 2003, effective on July 1, 2003.

OAR 459-007-0005 describes the process for crediting earnings annually to various accounts and reserves in the Fund Based on ORS chapter 238 as amended by new legislation. The public comment period is being extended as changes have been made to the draft rule and to allow the advisory committee to meet and submit comments. A copy of the proposed rule is available to any person upon request. The rule is also available at <http://www.pers.state.or.us>. Public comment may be mailed to the above address or sent via email to yvette.s.elledge@state.or.us

Rules Coordinator: Yvette S. Elledge

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

Telephone: (503) 603-7713

Oregon State Lottery Chapter 177

Stat. Auth.: ORS 461 & OR Const., Article XV, §4(4)

Stats. Implemented: ORS 461.200, 461.217 & 461.300

Proposed Adoptions: 177-045-0050, 177-045-0060, 177-045-0070, 177-045-0080

Proposed Amendments: 177-045-0000, 177-045-0010, 177-045-0030, 177-045-0040

Proposed Repeals: 177-045-0020

Last Date for Comment: 3-5-04

Summary: The proposed amendments update definitions, add new provisions regarding video lottery terminals and allocation to retailers, revise terminal placement requirements, add new provisions regarding equipment loss and liability, add new provisions regarding insurance coverage on Lottery equipment by retailers, and make general housekeeping and grammar changes. OAR 177-045-0020 is being suspended as it has been moved to Division 200 - General Video Lottery Game Rules. For clarification, the division title will be changed to Retail Sales Equipment Management.

Rules Coordinator: Mark W. Hohlt

NOTICES OF PROPOSED RULEMAKING

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

**Oregon State Marine Board
Chapter 250**

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.035

Proposed Adoptions: 250-010-0053

Last Date for Comment: 3-1-04

Summary: A recent court decision caused the Appellate Court to suggest the Marine Board adopt rules providing guidance to law enforcement officers regarding their process for conducting boating safety checks on boats where probable cause or reasonable suspicion had not been established. The rule will clarify officers authority to stop a boat for a random safety check.

Rules Coordinator: Jill E. Andrick

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

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

**Oregon University System
Chapter 580**

Date:	Time:	Location:
2-23-04	10 a.m.-12 p.m.	1431 Johnson Ln. 3rd Floor Conf. Rm. Eugene, OR

Hearing Officer: Denise Yunker

Stat. Auth.: ORS 351.070, 292.043-292.180 & 192.502(3)(a); Other Auth.: Privacy Act of 1974, 5 USC § 552a, Pub L No. 93-579, § 7, 88 Stat 1896, 1909 (1974)

Stats. Implemented:

Proposed Adoptions: 580-021-0044

Last Date for Comment: 3-1-04

Summary: This rule provides authority for the Oregon University System (OUS) and institutions of higher education that comprise the OUS to request use of employees' Social Security numbers for uses not deemed mandatory under the Privacy Act of 1974. The rule describes mandatory and voluntary uses of Social Security numbers for employees, their spouses, dependents, and partners who participate in or receive OUS benefits, programs, or services. The rule describes information that must be provided when an institution requests voluntary use of a Social Security number, including protections that apply if use is denied.

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

Rules Coordinator: Marcia M. Stuart

Address: Department of Higher Education, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5795

**Oregon University System,
Southern Oregon University
Chapter 573**

Date:	Time:	Location:
3-18-04	10 a.m.	Churchhill 220 Southern Oregon University Ashland, OR

Hearing Officer: Staff

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Adoptions: 573-001 - 573-090

Proposed Amendments: 573-001 - 573-090

Proposed Repeals: 573-001 - 573-090

Last Date for Comment: 3-26-04

Summary: Three year review of Southern Oregon University's administrative rules.

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

Rules Coordinator: Deborah S. Drost

Address: Oregon State System of Higher Education, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

Telephone: (541) 552-8550

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

Date:	Time:	Location:
3-2-04	3 p.m.	214 Friendly Hall UO Eugene, OR
3-5-04	3 p.m.	214 Friendly Hall UO Eugene, OR

Hearing Officer: Donna Chittenden

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

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

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

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

Rules Coordinator: Deb Eldredge

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

Telephone: (541) 346-3082

**Oregon University System,
Western Oregon University
Chapter 574**

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Proposed Amendments: 574-020-0020, 574-050-0005

Last Date for Comment: 2-24-04

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees and to revise staff positions titles in the handling of faculty records.

Rules Coordinator: Debra L. Charlton

Address: Oregon State System of Higher Education, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

Telephone: (503) 838-8175

**Oregon Youth Authority
Chapter 416**

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419C.478, 420A.125, 420.014 & 420A.010

Proposed Amendments: 416-430-0025

Last Date for Comment: 2-23-04

Summary: The OYA has amended this rule to revise and expand the reasons for sensitive case descriptors, and how they will be applied, reviewed, and removed.

Interested persons may request a copy of this rule from Kimberly Walker, OYA Rules/Policy Coordinator, 520 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

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-110-0000, 416-110-0010, 416-110-0020, 416-110-0030

Last Date for Comment: 2-23-04

Summary: This rule is being repealed in its entirety. The language will be adopted in a new division number. The OYA is aligning its rules to more closely follow its policies and procedures. Interested persons may request a copy of this rule from Kimberly Walker, OYA Rules/Policy Coordinator, 520 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

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 192 & 419A.255

Proposed Adoptions: 416-105-0000, 416-105-0010, 416-105-0020, 416-105-0030, 416-105-0040

Last Date for Comment: 2-23-04

Summary: This rule is being adopted and will include language from OAR Chapter 416, Division 110. Division 110 is being repealed and renumbered as Division 105. Language has also been added to define "authorized representative." Agency name changes will be adopted, language changes from "shall" to "will," and minor grammatical errors will be corrected. The OYA is aligning its rules to more closely follow its policies and procedures. Interested persons may request a copy of this rule from Kimberly Walker, OYA Rules/Policy Coordinator, 520 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

Parks and Recreation Department Chapter 736

Date:	Time:	Location:
2-18-04	7-9 p.m.	Community Rm. City Hall 451 Winchester Ave. Reedsport, OR 97467

Hearing Officer: Kathy Schutt

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

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

Proposed Amendments: 736-018-0045

Last Date for Comment: 2-25-04

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 Umpqua Lighthouse State Park. 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 Douglas County.

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

Rules Coordinator: Angie Springer

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

Telephone: (503) 986-0719

Stat. Auth.: ORS 153 & 390

Stats. Implemented: ORS 153.018, 390.050, 390.011 & 390.990

Proposed Amendments: 736-010-0022

Last Date for Comment: 2-25-04

Summary: Implements House Bill 2759, 2003 Legislative Session, which modifies fines for certain violations. The revised Base Fine Schedule became effective on September 1, 2003 with additional changes to become effective on January 1, 2004. The Oregon Parks and Recreation Commission adopted a temporary rule at their meeting on January 8, 2004. A permanent rule change published in the February 2004 Bulletin will become effective on April 1, 2004.

Rules Coordinator: Angie Springer

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

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

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.121 & 390.124

Proposed Amendments: 736-010-0098, 736-010-0099, 736-010-0100, 736-010-0115, 736-010-0120, 736-010-0125

Last Date for Comment: 3-15-04

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 there is a benefit to the Department either through marketing, promotion of the Oregon State Parks or promotion of Oregon tourism; and reduce fees when service levels fall below normal standards.

Rules Coordinator: Angie Springer

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

Telephone: (503) 986-0719

Stat. Auth.: ORS 390.124; Other Auth.: Lower Deschutes River Management Plan

Stats. Implemented: ORS 390.805 - 390.940

Proposed Amendments: 736-040-0070, 736-040-0071

Last Date for Comment: 3-5-04

Summary: The proposed rule amendments affect boaters on the lower 100 miles of the Deschutes River Scenic Waterway. Changes include an increase in overnight camping nights for boaters between May 15 and October 15; clarification that annual passes are not to be valid on Fridays May 15 through September 15 in segments 1, 2, 3, and from May 15 through October 15 in segment 4, nor are they valid within any river segment on any day under a limited entry system; and clarification as to where daily boater passes may be purchased.

Rules Coordinator: Angie Springer

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, 757, 759 & OL 1987 Ch. 290

Stats. Implemented: ORS 756.040, 757.005, 757.061, 759.045, 759.220, 759.225 & OL 1987 Ch. 290

Proposed Amendments: 860-021-0200, 860-034-0010, 860-034-0140, 860-036-0040, 860-037-0035

Last Date for Comment: 2-23-04

Summary: The proposed rule would clarify a utility's responsibility regarding the use of credit scoring to establish an applicant's cred-

NOTICES OF PROPOSED RULEMAKING

it and allow a small telecommunications utility to apply for a waiver of the Commission's rules, with good cause.

Rules Coordinator: Lauri Salsbury

Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

Telephone: (503) 378-4372

Racing Commission
Chapter 462

Date: 2-19-04 **Time:** 1:30 p.m. **Location:** Rm. 140
800 NE Oregon St.
Portland, OR

Hearing Officer: Stephen S. Walters, Commissioners

Stat. Auth.: ORS 462.250; Other Auth.: ORS 462.270

Stats. Implemented: ORS 462.430

Proposed Amendments: 462-120-0020

Last Date for Comment: 2-19-04

Summary: Amends the rule to include the periodic use of a metal detector to inspect jockeys for contraband prior to leaving for the saddling paddock.

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

Rules Coordinator: Carol N. Morgan

Address: Oregon Racing Commission, 800 NE Oregon St. #11, Suite 310, Portland, OR 97232

Telephone: (503) 731-4052

Secretary of State,
Archives Division
Chapter 166

Date: 2-20-04 **Time:** 1 p.m. **Location:** Oregon State Archives Bldg.
800 Summer St.
Salem, OR

Hearing Officer: Layne Sawyer

Stat. Auth.: ORS 357.875

Stats. Implemented: ORS 357.875

Proposed Adoptions: 166-020-0011

Last Date for Comment: 2-20-04

Summary: Specifies that state agency or local government shall not store records in a facility or with an entity that would restrict access by the State Archivist to any Oregon public record.

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

Rules Coordinator: Julie Yamaka

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

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

Water Resources Department
Chapter 690

Date: 2-24-04 **Time:** 9-10 a.m. & 6:30-7:30 p.m. **Location:** Conf. Rm. 124a
725 Summer St. NE
Suite A
Salem, OR 97301

Hearing Officer: Tracy Eichenlaub

Stat. Auth.: ORS 537.780 & 536.027

Stats. Implemented: ORS 537.753 & 537.762

Proposed Amendments: 690-200-0050, 690-205-0005, 690-205-0175, 690-205-0200, 690-205-0210, 690-240-0005, 690-240-0010, 690-240-0035, 690-240-0055, 690-240-0340, 690-240-0375, 690-240-0395, 690-240-0525

Last Date for Comment: 3-10-04

Summary: The Water Resources Department is proposing to amend rules in OAR Chapter 690, Divisions 200, 205 and 240 regarding water supply and monitoring wells and geotechnical holes.

In 2003, the Oregon Legislative Assembly passed HB 2210 (Chapter 144, Oregon Laws 2003) which increases the well constructor bond to \$10,000 and the bond for a landowner's permit to \$5,000, effective January 1, 2004. The increased bond better reflects the cost of a well repair and abandonment, provides greater resource protection and greater protection for affected parties should a well be mis-constructed.

Under previous law (ORS 537.762), a fee of \$75 was required with each "Start Card" for new construction or conversion of a well. In 2003, the Oregon Legislative Assembly passed House Bill 2268 (Chapter 594, Oregon Laws 2003) which adjusts the fee from \$75 to \$125 and adds a requirement to submit a fee with each "Start Card" for a well deepening. The increased fee allows the continued support of Department staff directly associated with the Department's statewide well inspection program.

The proposed rules update existing rules with changes made by the 2003 Legislative Assembly and add or modify various definitions. The proposed rules also make changes regarding the use of latitude and longitude on a well report or geotechnical hole report in lieu of the Township, Range, Section and 1/4 1/4 section; clarify regulation of piezometers; add examples of "cased permanent geotechnical holes" and "slope stability geotechnical holes;" and modify the requirements for submitting a "Geotechnical Hole Report" for certain slope stability geotechnical holes.

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

Rules Coordinator: Adam Sussman

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

Telephone: (503) 986-0877

Date: 2-23-04 **Time:** 3-4 p.m. **Location:** OR Dept. of Water Resources
Conf. Rm. 124
725 Summer St. NE
Suite A
Salem, OR 97301

Hearing Officer: Water Resources Commissioner

Stat. Auth.: ORS 536.027, 536.300 & 536.340

Stats. Implemented:

Proposed Adoptions: 690-502-0215

Last Date for Comment: 3-9-04

Summary: The Water Resources Department is proposing to adopt a rule under the Willamette Basin Program (OAR Chapter 690, Division 502). The proposed rule would provide a limited opportunity for certain holders of five-year limited ground water permits to submit an application for a ground water permit without the five-year limitation.

In January 1992, after an extensive public process, the Water Resources Commission adopted modifications to the Willamette Basin Program that included numerous restrictive ground water classifications and limitations. In that rulemaking, the Commission established several "Ground Water Limited Areas" to address concerns about declining ground water levels. The Commission's rules established a date of October 4, 1991, as the date pending ground water applications would be subject to the new rules. In other words, applications in certain designated "Ground Water Limited Areas" pending on October 4, 1991, would be processed under the classifications in effect at the time the application was submitted; applications filed after October 4, 1991, would be subject to the "new" classifications. In either case, the rules established provisions that new ground water permits in the "Ground Water Limited Areas" may be issued for a period not to exceed five years, with an opportunity to be extended for additional five-year periods if the ground water resource can sustain the continued use.

Over the last several years, a number of the holders of these "five-year permits" have argued that the "retroactive" nature of the Commission's 1992 rulemaking was unfair and that the ground water

NOTICES OF PROPOSED RULEMAKING

resource in their area is stable and therefore a “normal” conditioned permit should be allowable.

The proposed rule would modify the Willamette Basin Program to allow a holder of a five-year permit with a priority date of October 4, 1991 or earlier in the Damascas, Glad Tidings, Kingston, Mount Angel, Parrett Mountain, Stayton-Sublimity, Sherwood-Dammasch-Wilsonville, Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Area to submit a ground water application for any classified use under OAR 690-502-0160(2). An application submitted under the proposed rule would not be subject to the five-year limitations of the subject Ground Water Limited Area. Applications under the proposed rules will be subject to all current application processing rules and review requirements.

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

Rules Coordinator: Adam Sussman

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

Telephone: (503) 986-0877

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Adm. Order No.: BOA 2-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 801-001-0035, 801-001-0050

Rules Amended: 801-001-0005, 801-001-0010, 801-001-0015, 801-001-0020

Subject: This rulemaking adopts a rule that allows all professional standards and interpretations to be those in effect on a certain date, eliminating the reference to effective dates throughout OAR Chapter 801. Other revisions are not substantive, but provide clarification.

OAR 801-001-0050 is identical to the rule on confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2). The rule covers all mediations involving the Board of Accountancy, except those express exclusions. The rule limits information that the mediator may disclose and allows the parties to agree in writing to limit what may be disclosed or used in a subsequent administrative proceeding.

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

801-001-0005

Model Rules or Procedure

Pursuant to ORS 183.341, the Oregon Board of Accountancy adopts by this reference the Model Rules of Procedure as promulgated by the Attorney General under the Administrative Procedures Act.

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

Stat. Auth.: ORS 670.310, 673.410

Stats. Implemented: ORS 183.341

Hist.: AB 20A, f. 1-17-72, ef. 2-1-72; AB 25, f. 9-15-72, ef. 10-1-72; 1AB 33, f. 11-6-73, ef. 11-25-73; 1AB 38, f. & ef. 2-10-76; 1AB 3-1978, f. & ef. 3-23-78; 1AB 1-1980, f. & ef. 2-26-80; 1AB 1-1982, f. & ef. 1-8-82; AB 5-1988, f. & cert. ef. 10-31-88; AB 6-1991, f. & cert. ef. 12-18-91; AB 3-1994, f. & cert. ef. 8-10-94; AB 1-1-96, f. & cert. ef. 1-29-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

801-001-0010

Screening and Selection Procedures for Personal Services Contracts

The Oregon Board of Accountancy adopts by this reference the Personal Contract Rules as promulgated by the Department of Administrative Services for procedures to be followed when entering into personal services contracts.

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 279.051

Hist.: AB 4-1992, f. & cert. ef. 8-10-92; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

801-001-0015

Board Agenda Items

All items for the Board agenda must be complete and received at least seven business days prior to the date of the Board meeting in order to be included on the Board agenda.

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 192.640

Hist.: AB 6-1995, f. & cert. ef. 10-2-95; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

801-001-0020

Hearing Panel Rules

The Oregon Board of Accountancy adopts by this reference the Hearing Panel Rules (OAR chapter 137), as promulgated by the Department of Justice.

Stat. Auth.: OL 1999 Ch. 849 Sec. 2-21

Stats. Implemented: ORS 673.185

Hist.: BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of December 31, 2003.

Stat. Auth.: ORS 183.332, 673.410

Stats Implemented: ORS 183.337, 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

801-001-0050

Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

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

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

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an “agreement to mediate.”

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 801-001-0050(7), and this agreement. This agreement relates to the following mediation:

a) (Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 801-001-0050(7), mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

c) _____

Name of Agency

ADMINISTRATIVE RULES

Date
Signature of Agency's authorized representative (when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

Date
Signature of Party's authorized representative

e) _____
Name of party to the mediation

Date
Signature of Party's authorized representative

(9) Exceptions to confidentiality and inadmissibility

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communications in confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceedings to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon Board of Accountancy determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.220 - ORS 36.238, ORS 183.335(5) & ORS 673.410

Hist.: BOA 1-2003(Temp), f. & cert. ef. 10-15-03 thru 3-15-04; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04

Adm. Order No.: BOA 3-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-005-0010

Subject: These rules are being amended to remove the effective dates of standards and interpretations adopted by the Board. The effective date of all such standards is now in Division 001. In addition the amendments add two new definitions.

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

801-005-0010

Definitions

As used in OAR chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA:** American Institute of Certified Public Accountants.

(2) **Applicant:** a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attest:** includes the following financial statement services:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS):

ADMINISTRATIVE RULES

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) An examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(d) An agreed-upon-procedures report on a financial statement to be performed in accordance with Statements on Standards for Attestation Engagements (SSAE).

(e) The statements on standards specified in this definition are those developed by the AICPA.

(4) **Business organization:** any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA or Certified Public Accountant:** a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam:** the Uniform Certified Public Accountant Examination.

(7) **CPE:** continuing professional education.

(8) **Candidate:** a person applying for the CPA Exam.

(9) **Certificate:** a certificate of certified public accountant issued under ORS 673.040.

(10) **Client:** a person who agrees with a licensee to receive any professional service from the licensee.

(11) **Commission:** a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(12) **Compilation:** a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **Contingent fee:** a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(14) **Direct supervision:** a clear connection between the supervisor and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling and evaluating activities, and in discharging the employee being supervised.

(15) **Enterprise:** any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(16) **Financial statements:** the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(17) **Firm:** a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(18) **First time candidate:** a candidate for the CPA exam who is sitting for the exam for the first time in any state.

(19) **Generally Accepted Accounting Principles:** accounting principles or standards generally accepted in the United States, including but not limited to *Statements of Financial Accounting Standards* and interpretations thereof, as published by the Financial Accounting Standards Board, and *Statements of Governmental Accounting Standards* and interpretations thereof, as published by the Government Accounting Standards Board.

(20) **Generally Accepted Auditing Standards:** the *Generally Accepted Auditing Standards* adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in *Statements on Auditing Standards* issued by the AICPA, and for federal audits, the *Single Audit Act of 1984* and related U.S. Office of Management and Budget Circulars published by the General Accounting Office.

(21) **Holding out as a CPA or PA:** to assume or use by oral or written communication the titles or designations "certified public accountant"

or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card or device tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(22) **Inactive status:** permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

(23) **In good standing:** the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(24) **Jurisdiction:** the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(25) **License:**

(a) A certificate, permit or registration, or a license issued under ORS 673.100, or other authority enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(26) **Licensee:** the holder of a license as defined in these rules.

(27) **Material participation:** participation that is regular, continuous and substantial.

(28) **Manager:** a manager of a limited liability company.

(29) **Member:** a member of a limited liability company.

(30) **NASBA:** National Association of State Boards of Accountancy.

(31) **Non-licensure owner:** a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(32) **PA or Public Accountant:** a person who is the holder of a license issued under ORS 673.100.

(33) **Peer Review:** a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services. The peer review is conducted by a person or persons who are permitted under ORS 673.150 to practice public accountancy and who are independent of the permit holder or registered business organization being reviewed.

(34) **Permit:** a permit to practice public accountancy issued under ORS 673.150.

(35) **Practice of public accountancy:** performance of or any offer to perform one or more services for a client or potential client, by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements, including the performance of such services while in the employ of another person.

(36) **Principal Place of Business:** the physical location, as identified by a licensee, where the licensee conducts substantial administrative or management activities. For purposes of "substantial equivalency" the physical location cannot be in the State of Oregon.

(37) **Professional:** arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(38) **Professional services:** any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(39) **Referral fee:** includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(40) **Registration:** the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(41) **Returning candidate:** a person who has received grades for any section of the Uniform CPA exam in any state and who applies to sit for any part of the CPA exam in Oregon.

(42) **Single Audit Act of 1984:** the Single Audit Act of 1984 with the Single Audit Act Amendments of 1996, as published by the United States General Accounting Office, Office of Management and Budget.

(43) **Standards for Accounting and Review Services:** the *Statements on Standards for Accounting and Review Services* published by the AICPA.

ADMINISTRATIVE RULES

(44) **Standards for board approved peer review programs:** the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(45) **Statements on Standards for Attestation Engagements:** the statements by that name issued by the AICPA.

(46) **State:** any state, territory or insular possession of the United States, and the District of Columbia.

(47) **Substantial equivalency:** a determination by the National Qualification Appraisal Service of the National Association of State Boards of Accountancy that:

(a) The education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act; or

(b) An individual's education, examination and experience qualifications are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act.

(48) **Supervisor licensee:** A certified public accountant or public accountant whose license is not revoked, suspended, on probation, lapsed or inactive, who qualifies under OAR 801-010-0065 as a supervisor for the purpose of verifying the experience requirement of an applicant for certification under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(49) **Uniform Accountancy Act (UAA):** A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession.

(50) **Valid:** Describes a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority or firm registration that is active and in good standing with the appropriate licensing authority.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 670.310, 673.010, 673.012, 673.153, 673.410
Stats. Implemented: ORS 670.310, 673.410, 673.010, OL 2001, ch 638 & ch 313, 673.012, 673.153, 673.040, 673.220, 673.320
Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04

Adm. Order No.: BOA 4-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-010-0010, 801-010-0045, 801-010-0050, 801-010-0060, 801-010-0075, 801-010-0080, 801-010-0085, 801-010-0110, 801-010-0115, 801-010-0125, 801-010-0345

Subject: Amendments implement the transition from paper and pencil CPA exam to the computer based CPA exam, including fees, conditional status, and transition rules. Amendment to require public accountants applying to become certified public accountants to meet the current educational requirements. New provision stating when notice is not required under substantial equivalency. Clarification that renewals received after June 30 are subject to late fee. Requirements for licensees who resign their license. Rules regarding non-CPA ownership and branch offices were moved from Division 030 to Division 010 for consistency. New provisions describe internet practice requirements.

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

801-010-0010

Fees

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

- (1) **Application fees.** All application fees are non-refundable.
 - (a) CPA Examination:
 - (A) Initial Examination — \$100
 - (B) Re-Examination — \$ 50
 - (C) Proctor Fee — \$100
 - (b) CPA Certificate or PA License — \$150
 - (c) Substantial equivalency by notification — \$100
- (2) **Initial permit and registration fees:**
 - (a) Initial CPA or PA Permit — \$150

(b) Municipal Auditor — \$100

(c) Firm Registration — \$100

(3) **Biennial renewal fees:**

(a) Active Permit — \$150

(b) Inactive Permit — \$ 50

(c) Municipal Auditor — \$100

(d) Firm Registration — \$100

(4) **Annual renewal fees:**

(a) Substantial equivalency by notification — \$100

(5) **Late renewal penalty fees:**

(a) Active Permit — \$ 50

(b) Inactive Permit — \$ 35

(c) Firm Registration — \$ 35

(6) **Miscellaneous fees:**

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per page thereafter.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Secretarial/clerical, \$17 per hour, in quarter hour increments at \$4.25 per quarter hour.

(B) Professional/technical, \$25 per hour, in quarter hour increments at \$6.25 per quarter hour.

(7) **Form of Payment:**

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160; 197.720 & 673.153
Stats. Implemented: ORS 673, ORS 297, ORS 192.440
Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. ef. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0045

Uniform Certified Public Accountant Exam

CPA exam rules. The Board adopts by this reference the CPA Examination Rules of Conduct as promulgated by the AICPA. The Board may deny credit for any or all sections of the exam and may prohibit candidates from retaking the exam for any of the following reasons:

- (1) Conduct that violates the CPA Examination Rules of Conduct,
- (2) Violation of the confidentiality provisions of the CPA Examination Rules of Conduct, which shall result in denial of credit for the candidate's scores on the CPA exam and the candidate shall be prohibited from retaking the CPA exam for a period of ten years.

Stat. Auth.: ORS 670.310, ORS 673.060
Stat. Implemented: ORS 673.060, ORS 673.410
Hist.: BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0050

Application for Uniform CPA Examination

(1) Definitions

(a) **Authorization to Test (ATT):** Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit a Re-examination Application and re-examination fee to the Board of Accountancy for

ADMINISTRATIVE RULES

any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

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

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

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

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

(2) Applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from an accredited college or uni-

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Authorization to Test and Notice to Schedule.

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

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

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

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

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

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

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

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

ADMINISTRATIVE RULES

didate must submit a re-examination application to the Board, with the appropriate CPA Exam Fee, to receive another ATT.

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

(A) Contact NASBA to request the NTS;

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

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

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

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

(f) **Testing.**

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

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

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

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

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

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

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

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

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0060

Credit for Uniform CPA Examination Sections

(1) **Exam section requirements.**

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who were eligible under the provisions of ORS 673.050(2) (1999 Edition) and who sat and received grades for two sections of the CPA exam before January 1, 2002 are required to take and pass the following two sections of the CPA exam: Accounting and Reporting (ARE) and Audit.

(c) After January 1, 2002, candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) **Credit for CPA exam sections.**

(a) The passing grade for all sections of the exam is 75. Credit for the CPA exam will be allowed as follows:

(b) **Transitional Credit from Paper & Pencil CPA Exam.** Candidates who hold conditional credit under the paper and pencil CPA exam will retain conditional credit for the corresponding exam sections under the computer based CPA exam as follows:

Paper and Pencil Exam — Computer Based Exam

Auditing — Auditing & Attestation

Financial Accounting and Reporting (FARE) — Financial Accounting and Reporting

Accounting and Reporting (ARE) — Regulation

Business Law & Professional Responsibilities (LPR) — Business Environment &

Concepts

(c) A candidate who earned conditional credit under the paper and pencil CPA exam will be allowed a transition period to complete remaining exam sections. The transition period is the maximum number of opportunities to complete all remaining test sections that the candidate has remaining at the launch of the computer-based examination, or three years from the last day of the month in which conditional credit was earned, whichever is exhausted first. During the candidate's transition period, credit for any

computer-based exam section passed is subject to subsection (e) of this rule.

(d) If a candidate who earned conditional credit under the paper and pencil CPA exam does not pass all remaining exam sections during the transition period described in subsection (c) of this rule, conditional credit earned under the paper and pencil exam will expire and the candidate will lose credit for those exam sections earned under the paper and pencil exam.

(e) **Credit for Computer Based CPA Exam.** Upon implementation of the computer based CPA exam, a candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed shall be valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section(s) and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA Exam within a rolling eighteen (18) month period, which begins on the date of the first section(s) passed;

(B) Upon passing any CPA exam section, the passing date of that section shall be the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen (18) month period shall lose credit for any section(s) passed outside the eighteen (18) month period and that section(s) must be retaken.

(f) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

(g) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) **Transfer of CPA exam scores from other jurisdictions.** The Board may allow the transfer of CPA exam scores and grant credit to a candidate who has successfully completed any section(s) of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section(s) passed; and

(c) The candidate who first sat for the CPA exam in another jurisdiction after January 1, 2000 was qualified under the educational requirement of ORS 673.050(1) at the time the candidate first took the CPA exam in the jurisdiction from which grades are requested to be transferred.

Stat. Auth.: ORS 670.310, ORS 673.410

Stat. Implemented: ORS 673.050, ORS 673.060, ORS 673.075

Hist.: 1AB 12, f. 3-30-65; 1AB 14, f. 8-15-68; 1AB 16, f. 1-30-70, ef. 2-25-70; 1AB 19, f. 10-22-71, ef. 11-15-71; 1AB 21, f. 3-2-72, ef. 3-15-72; 1AB 30, f. 9-18-73, ef. 10-1-73; 1AB 35, f. 10-29-74, ef. 11-25-74; 1AB 36, f. 1-28-75, ef. 2-25-75; 1AB 40, f. & ef. 5-5-76; 1AB 41, f. & ef. 12-2-76; 1AB 43, f. & ef. 3-31-77; 1AB 2-1978, f. & ef. 3-21-78; 1AB 11-1978, f. & ef. 12-1-78; 1AB 3-1979, f. & ef. 12-21-79; 1AB 2-1980, f. & ef. 4-8-80; 1AB 3-1980, f. 10-23-80, ef. 12-1-80; 1AB 5-1981, f. & ef. 7-27-81; 1AB 6-1981, f. & ef. 7-27-81; 1AB 3-1982, f. & ef. 4-20-82; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0075

Public Accountants applying for certificate of public accountancy

A Public Accountant licensed in Oregon who is applying for a certificate of public accountancy shall:

(1) Hold an active Public Accountant license issued under ORS 673.100 that is not revoked, suspended, on probation or lapsed;

(2) Present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

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

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

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

(3) Successfully complete all sections of the CPA exam. Credit may be received for sections of the CPA exam previously completed if the requirements of OAR 801-010-0060 are satisfied; and

(4) Satisfy the experience requirements under ORS 673.040 and OAR 801-010-0065.

(5) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application

Stat. Auth.: ORS 670.310, ORS 673.410

ADMINISTRATIVE RULES

Stats. Implemented: ORS 673.040

Hist.: BOA 4-1998, f. & cert. ef. 6-16-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0080

Holders of Certificates in Other States, US Territories or Foreign Countries

(1) **Substantial equivalency applications by notification.** An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency, may receive authorization to practice public accountancy in this state, upon application. Eligibility under the standards of substantial equivalency shall be based on evaluations conducted by the National Qualification Appraisal Service. An applicant may meet one of the following two standards to establish eligibility under this rule:

(a) The jurisdiction that issued the license on which the application is based is verified to be of substantial equivalency; or

(b) The applicant as an individual meets qualifications that are verified to be of substantial equivalency.

(2) Notification requirements.

(a) Prior to practicing public accountancy in this state (by accepting an engagement or an assignment to render professional services in this State, or by offering to render professional services through direct solicitation or marketing targeted to persons in this State) applicants shall submit notification on a form provided by the Board and pay the fees specified in OAR 801-010-0010;

(b) Within 30 days of notification to the Board, applicants shall:

(A) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state; and

(B) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(i) Is in good standing in that jurisdiction;

(ii) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice, and is not the subject of any pending actions alleging violations of that jurisdiction's standards of conduct or practice; and

(iii) Is in compliance with continuing education and peer review requirements of the licensing jurisdiction.

(3) **Notification Not Required.** The notification requirements specified in OAR 801-010-0080(2) are not required if the individual is:

(a) Teaching either a college or continuing professional education course,

(b) Delivering a lecture,

(c) Moderating or participating in a panel discussion, or

(d) Rendering professional services to the individual's employer including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients and so long as the provisions of ORS 673.320 are met.

(4) **Renewal of application by notification.** Every authorization to practice by notification shall be renewed on or before January 1 of each year that the holder wishes to practice in this state. Renewal applicants are required to provide the information stated in section (2) of this rule and submit payment of the fee designated in OAR 801-010-0010 with each renewal application.

(5) **Applications by reciprocity.** Individuals who wish to establish a principal place of business in this state are required to obtain a CPA certificate and permit under this section prior to practicing as a CPA in this state.

(a) Applications based on an active CPA license that is in good standing and was issued by another jurisdiction prior to January 1, 2000 are eligible under this subsection if the issuing jurisdiction required successful completion of the CPA exam, a Baccalaureate degree and two years public accountancy experience or the equivalent for certification at the time the applicant's license was issued;

(b) Applications based on an active CPA license issued by another jurisdiction that is in good standing are eligible under this subsection if the applicant meets the following qualifications:

(A) Successful completion of the CPA exam,

(B) 150 semester hours, including a Baccalaureate degree, or the equivalent thereof, and 24 semester (36 quarter) hours in accounting and 24 semester (36 quarter) hours in accounting and/or related subjects which are defined as business, economics, finance and written/oral communication, and

(C) At least one year public accounting experience or the equivalent.

(c) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (5)(a) or (b) of this rule, are eligible under this subsection if the applicant demonstrates to the

satisfaction of the Board that during four of the ten years immediately preceding the application under ORS 673.040, the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application; and

(C) Successfully completed the CPA exam.

(6) **Reciprocity application requirements.** Applicants under section (5) of this rule shall:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct or practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(7) **Verification of National Qualification Appraisal Service comparable licensing standards.** The Board shall review the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, ORS 673.410, ORS 673.153

Stat. Implemented: ORS 673.040, ORS 673.153

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0085

Holders of Foreign Certificates, Credentials or Degrees

The Board recognizes the International Qualifications Appraisal Board (IQAB), a joint body of NASBA and AICPA. IQAB is charged with:

(1) Evaluating the professional credentialing process of certified public accountants or their equivalents in countries other than the United States; and

(2) Negotiating principles of reciprocity agreements with the appropriate professional and/or governmental bodies of other countries seeking recognition as having requirements substantially equivalent to requirements in the United States to qualify for and receive the certificate of certified public accountant.

(3) The Board shall honor the principles of reciprocity agreements issued by IQAB.

(4) An applicant for a certified public accountant certificate in Oregon who holds a certificate, credential or degree issued by a foreign country that is claimed to be comparable to a certificate or license issued by the Board, or an applicant who holds a certificate or license issued by the licensing body of any state or US Territory that is based upon the certificate, credential or degree granted by a foreign country that is not recognized under any IQAB Reciprocity Agreement is required to meet the following requirements:

(a) Satisfy the educational requirement under ORS 673.050 for admission to the CPA exam. The applicant's academic credentials shall be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(b) Pass all sections of the CPA exam required by ORS 673.060; and

(c) Complete the experience requirement under ORS 673.040, 673.100 and OAR 801-010-0065.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.040, ORS 673.060

Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0110

Renewal of Permits

(1) Unless properly renewed, permits issued under ORS 673.150 that end in even numbers shall expire on June 30 of even-numbered years and permits that end in odd numbers shall expire on June 30 of odd-numbered years. To renew an active or inactive permit, the certificate or license holder shall:

ADMINISTRATIVE RULES

(a) Submit the current renewal form provided by the Board, fully completed and postmarked by the US Post Office or other delivery service no later than June 30 of the year in which the permit shall expire;

(b) Pay the renewal fee specified in OAR 801-010-0010, and

(c) If applying for renewal of an active permit, provide evidence that the applicant has satisfied continuing education and peer review requirements.

(d) If the renewal application is postmarked by the US Post Office or other delivery service after June 30, the licensee shall submit the late fee described in OAR 801-010-0010.

(2) The Board may waive the first renewal fee if an initial permit is issued in May or June of the year in which the permit is due for renewal.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.150

Hist.: IAB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0115

Resignation of Licensee

(1) Resigning permits that are not the subject of pending complaints or Board investigations. A certified public accountant or public accountant may resign and surrender the licensee's certificate or license and permit issued under ORS 673.040, 673.100 and 673.150, by submitting a written resignation, together with the original certificate or license issued by the Board. The licensee's resignation shall be accepted by the Board only if the licensee acknowledges in writing that:

(a) The license or certificate issued to the licensee must be returned to the Board; and

(b) After such resignation, in the event that the licensee wishes to reapply for a permit to practice public accountancy, the licensee will be required to meet all requirements of ORS Chapter 673 and OAR chapter 801.

(c) All resignations are effective upon acceptance by the Board.

(2) Resigning permits that are the subject of pending complaints or Board investigations. If the licensee's certificate or license is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be deemed to be a revocation for misconduct in the event that the licensee applies for a certificate or license after such resignation is accepted by the Board. A licensee who resigns under this section is required to notify all clients of the date of resignation and provide the Board with a list of the clients notified. The Board may refuse to accept a resignation under this provision if the written resignation does not include a written acknowledgment by the resigning licensee of the following:

(a) That the licensee is required to return the CPA certificate or PA license to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) That the licensee understands that in the event the licensee submits a subsequent application to be licensed to practice public accountancy, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation; and

(d) That upon any subsequent application to practice public accountancy, the licensee must meet all requirements of ORS Chapter 673 and OAR chapter 801.

(e) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation.

(3) Requirements upon acceptance of resignation. Upon resignation, a former licensee is required to:

(a) Surrender the CPA certificate or PA license to the Board;

(b) Take all reasonable steps to avoid foreseeable harm to any client;

(c) Maintain client records for a period of at least six years, or return such records to the client; and

(d) Continue to comply with the requirements of OAR 801, division 030 pertaining to confidential information and client records.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.410

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0125

Renewal of Inactive Status

(1) Inactive status granted to a licensee under ORS 673.220 shall expire on June 30 of each expiration year of the licensee's permit under the provisions of OAR 801-010-0110, unless properly renewed.

(2) To renew inactive status, a certificate or license holder shall, before the time at which the inactive permit would otherwise expire, apply to renew such permit on a form provided by the Board.

(3) The application shall be accompanied by the appropriate renewal fee prescribed by OAR 801-010-0010.

(4) Applications that are postmarked by the US Postal Service or other delivery service after June 30 shall include a late fee described in OAR 801-010-0010.

Stat. Auth.: ORS 670.310 & ORS 673.410

Stats. Implemented: ORS 673.220

Hist.: IAB 2-1986, f. & ef. 10-15-86; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

801-010-0345

Registration of Business Organizations

(1) **Requirement to register as a firm.** A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization engages in any of the following activities in this state:

(a) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or

(c) Performs attestation or compilation services, as defined by these rules.

(2) **Registration of sole proprietorships.** A business organization organized as a sole proprietorship and comprised of a single permit holder under ORS 673.150 is required to register as a firm if the business organization engages in any of the following activities in this state:

(a) Holds out to clients or to the public that it is composed of more than one licensee, or

(b) Performs attestation or compilation services.

(3) **Application requirements.** Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) shall be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application shall provide the following information in writing:

(a) Name of the firm;

(b) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(c) The physical address of every office and branch office in this state;

(d) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(e) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(f) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(4) **Application requirements for firms with non-CPA and non-PA ownership.** In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm shall provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

ADMINISTRATIVE RULES

- (d) The physical address of every office maintained in this state;
- (e) The identity of every person with management responsibility for each office in this state;
- (f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) **Issuance of firm registration.** The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal. Business organizations that fail to renew a registration by the close of the renewal period are required to pay the renewal fee plus a late fee;

(b) Notify the Board in writing of any change in the firm name within 30 days of such change;

(c) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(d) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) **Form of practice.** A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) **Non-CPA or non-PA ownership.** A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(A) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant previously licensed in any state whose license to practice public accountancy has been revoked by any state, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) **Branch offices.**

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) **Internet Practice.** Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond to inquiries regarding individual license information within seven business days. The required information must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, ORS 673.410 & ORS 673.160

Stats. Implemented: ORS 673.160 & ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04

Adm. Order No.: BOA 5-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-020-0700

Subject: This rulemaking allows CPE requirements for the first renewal period after appointment to the municipal roster to be prorated.

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

801-020-0700

Qualifications for Continuance on Roster

(1) **Continuing CPE Requirement.** Licensees admitted to the municipal roster are required to complete 24 hours of CPE in subjects directly related to the governmental environment and governmental auditing during each renewal period. A minimum of 16 hours are required in the following subjects:

(a) Audits of state and local governmental units;

(b) Governmental Accounting and Financial Reporting Standards and updates;

(c) Generally Accepted Governmental Auditing Standards and updates;

(d) Single Audit Act and related Office of Management and Budget circulars and supplements;

(e) Oregon Local Budget Law; or

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(2) No more than 8 of the 24 required hours may be in courses relating to generally accepted auditing standards and procedures. Courses that make up the 8 hours described herein may include such topics as current developments in audit methodology, assessment of internal controls and statistical sampling.

(3) CPE requirements in subjects directly related to governmental environment and governmental auditing for the first renewal period after appointment to the municipal roster shall be prorated at one (1) CPE hour per month.

(4) The 24 hours of CPE required under this rule may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

Stat. Auth.: ORS 297.670, ORS 297.680 & ORS 297.740

Stats. Implemented: ORS.297.680

Hist.: AB 4-1988, f. & cert. ef. 10-28-88; AB 4-1990, f. & cert. ef. 7-17-90; AB 3-1992, f. & cert. ef. 2-18-92; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 5-2003, f. 12-23-03 cert. ef. 1-1-04

Adm. Order No.: BOA 6-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-030-0005, 801-030-0015, 801-030-0020

Subject: These rules are being amended to include rules regarding independence standards for CPAs and PAs. The rules also clarify the rules on responsibilities to clients including what is required to be maintained by the licensee and for what period of time.

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

801-030-0005

Independence, Integrity, and Objectivity

(1) **Independence.** The Board adopts the Independence Rule established by the AICPA, ET Section Rule 101 Independence, together with the interpretations and rulings of such rule issued by the AICPA.

(a) Licensees who perform services that are subject to independence standards promulgated by other regulatory or professional standard setting bodies, agencies and organizations, including but not limited to the Securities and Exchange Commission, the General Accounting Office, the Oregon Secretary of State, Division of Audits and the US Department of Labor, must also comply with those standards applicable to the services provided.

(2) **Integrity and objectivity.**

(a) In the performance of any professional service, a licensee shall maintain objectivity and integrity and shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate the licensee's judgment to the judgment of others.

(b) In tax practice, however, a licensee may resolve doubt in favor of the client as long as there is reasonable support for the client's position.

(c) A licensee shall not accept employment adverse to a client or former client, relating to a matter with respect to which the licensee has obtained confidential information by reason of, or in the course of, the licensee's employment by, or relationship with such client or former client.

(3) **Commissions and referral fees.** Certified public accountants, public accountants and firms in the practice of public accountancy are per-

ADMINISTRATIVE RULES

mitted to pay and receive commissions and referral fees subject to the requirements of ORS 673.345 and this rule.

(a) **Definitions.** As used in this rule:

(A) A commission is a fee calculated as a percentage of the total value of the sale of any product or service that is paid or received in the form of money or other valuable consideration;

(B) A referral fee includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(C) Fee or fees include commissions and/or referral fees.

(b) **Notice to the Board.** Licensees who receive or pay commissions or referral fees shall report this fact on the application for biennial renewal of the license.

(c) **Related licensure/registration.** Prior to accepting commissions, licensees shall acquire and maintain in good standing any license or registration required by another governmental or private standard-setting body for the purpose of receiving commissions. Examples of licensing requirements include, but are not limited to the following:

(A) Oregon Department of Consumer and Business Services,

(B) National Association of Securities Dealers,

(C) Oregon Real Estate Agency, and

(D) Oregon Appraiser Certification and Licensure Board.

(d) **Prohibited commissions and referral fees.** A certified public accountant, public accountant or firm engaged in the practice of public accountancy shall not recommend or refer to a client any product or service, or recommend or refer any product or service to be supplied by a client in exchange for the payment or acceptance of a commission or referral fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(A) An audit, review or agreed-upon-procedures of a financial statement;

(B) An examination of prospective financial information; and

(C) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the certified public accountant.

(e) **Application of prohibitions.** The prohibitions in this rule apply:

(A) When the holder of a permit or any partner, officer, shareholder, member, manager or owner of the firm performs the services listed in this rule, and

(B) During the period in which the certified public accountant, public accountant or firm is engaged to perform any of the services listed in this rule, including the period(s) subject of the report and the period covered by any historical financial statements involved in the listed services.

(f) **Disclosure requirements.** A certified public accountant, public accountant or firm engaged in the practice of public accountancy who is not prohibited by this rule from paying or receiving a commission or referral fee, and who is paid or expects to be paid a commission or referral fee, shall disclose that fact to any client to whom the commission or referral fee relates.

(A) A copy of each disclosure shall be provided to the client prior to the time the product or service that is the basis of the fee is recommended, referred or sold, or prior to the time the client retains the licensee to whom the client has been referred and for which the fee or other valuable consideration will be paid.

(B) A copy of the disclosure shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs any services for the client.

(C) In the event of continuing engagements or a series of related transactions involving similar products or services with the same client, one written disclosure may cover more than one recommendation, referral or sale so long as the disclosure is provided at least annually and is not misleading.

(D) Disclosures under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed) and provided on a separate form that is acknowledged in writing by the client with the client's signature and date of acknowledgement;

(ii) State the amount of the commission or referral fee or the basis on which the payment will be calculated;

(iii) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment; and

(iv) Specify the services to be performed by the Licensee for the compensation to be received by the Licensee.

(g) **Transactions not prohibited.** This rule does not prohibit the following transactions:

(A) Payments for the purchase of all, or a material part of, an accounting practice;

(B) Retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons; or

(C) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

(h) **Audit of disclosure requirements.** Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of disclosure records required under this rule.

(4) **Contingent fees.** Certified public accountants, public accountants and firms in the practice of public accountancy may perform professional services for a client in exchange for a contingent fee subject to the requirements of ORS 673.345 and this rule.

(a) **Definitions.**

(A) A contingent fee is a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

(B) A contingent fee may vary depending, for example, on the complexity of the services rendered.

(b) **Notice to the Board.** Licensees who receive contingent fees in exchange for professional services shall report this fact on the application for biennial renewal of the license.

(c) **Prohibited contingent fees.**

(A) A certified public accountant, public accountant or firm in the practice of public accountancy may not perform professional services for a client in exchange for a contingent fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(i) Audit, review or agreed-upon-procedures of a financial statement;

(ii) Compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the licensee, or

(iii) Examination of prospective financial information.

(B) A certified public accountant, public accountant or firm in the practice of public accountancy may not prepare an original or amended tax return or a claim for a tax refund for any client in exchange for a contingent fee.

(d) **Application of prohibitions.** The prohibitions stated in paragraph (4)(c)(A) of this rule apply during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this rule and during any period covered by any historical or prospective financial statements involved with or related to such services.

(e) **Requirement for written agreement.** Every agreement to perform services in exchange for a contingent fee shall be in writing and shall be signed by the client.

(A) A copy of the agreement shall be provided to the client prior to the time the client retains the licensee for the service, or prior to the time that the service that is subject to the agreement is performed.

(B) Agreements under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed);

(ii) Include the signatures of all parties and date of each signature; and

(iii) State the amount of the contingent fee or the basis on which the fee will be calculated;

(C) A copy of the agreement shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs the disclosed services for the client.

(f) **Contingent fee transactions not prohibited.** Fees are not contingent if fixed by courts or other public authorities, or in tax matters if such fees are determined based on the results of judicial proceedings or the findings of governmental agencies.

(g) **Audit of contingent fee agreements.** Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of contingent fee agreements required under this rule.

(5) **Improper use of CPA and PA designation.**

(a) Non-public accounting business. Licensees engaged in a business or occupation other than the practice of public accountancy or performance of attestation services may use the "CPA" or "PA" designation in oral or other communications such as business cards, stationery or comparable forms if the use of the designation does not indicate in any way that the licensee is authorized to perform public accountancy or attestation services as part of the licensee's other business or occupation.

ADMINISTRATIVE RULES

(b) Commissions or contingent fees. Licensees shall not engage in any activity for which the licensee receives commissions or contingent fees while holding out to the public as a CPA or PA, except as provided under sections (3) and (4) of this rule.

(c) **Non-licensee owners.**

(A) A non-licensee owner of a business organization registered in Oregon under the provisions of ORS 673.160(4) shall not use any name or title that indicates or suggests that such owner is a certified public accountant or public accountant. This does not preclude a non-licensee owner from using the title "principal," "partner," "officer," "member" or "shareholder" to describe the ownership interest in the business organization.

(B) A business organization that includes non-licensee owners shall not use a firm name that includes both the name of a non-licensee owner and the title or designation for "certified public accountant," "public accountant", or any other words or description that would imply that the non-licensee owner included in the firm name is authorized to provide public accounting services.

Stat. Auth.: ORS 670.310, ORS 673.410, OL 2001 Ch. 313

Stats. Implemented: ORS 673.160, ORS 673.320, ORS 673.345, ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2001(Temp), f. & cert. ef. 7-9-01 thru 1-1-02; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04

801-030-0015

Responsibilities to Clients

(1) **Confidential client information.**

(a) **Prohibited disclosures.** Except as provided in subsection (b) of this rule:

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee.

(B) Members of the Board, members of Board committees and professional practice reviewers shall not disclose confidential client information which comes to their attention in the course of investigations, disciplinary proceedings or otherwise in carrying out their responsibilities, except that the Board may furnish such information when disclosure is required as described in subsection (b) of this rule.

(b) **Permitted disclosures.** Nothing in subsection (a) of this rule shall prohibit the disclosure of confidential client information under the following circumstances:

(A) When disclosure is required by the standards of the public accountancy profession in reporting on the examination of financial statements;

(B) When disclosure is required by a court order;

(C) In response to subpoenas issued in state or federal agency proceedings;

(D) In investigations or proceedings under ORS 673.170 or 673.400;

(E) In ethical investigations conducted by private professional organizations in the course of peer reviews;

(F) To the insurance carrier of a licensee in connection with a claim or potential claim; or

(G) When disclosure is required by the Oregon Board of Accountancy for regulatory purposes of the Board.

(2) **Client records and working papers.**

(a) **Definitions.** As used in this rule:

(A) Client records include any accounting or other records belonging to or obtained from or on behalf of the client or former client that the licensee received for the client's account or removed from the client's premises.

(B) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(C) In addition to the requirements specified in paragraph (B) of this rule, attest documentation shall include, but not be limited to, the following:

(i) The objectives, scope and methodology, including any sampling criteria used;

(ii) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(iii) Evidence of any supervisory review of the work performed.

(b) **Requested records.** Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(i) A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;

(ii) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(c) **Non-payment by client.** Licensees shall not refuse to provide client records and working papers as described in subsection (b) of this rule based on the client's failure or refusal to pay the licensee's fees.

(d) **Custody and disposition of working papers.**

(A) A licensee may not sell, transfer or bequeath working papers described in this rule to anyone other than one or more surviving partners or stockholders, or new partners or stockholders of the licensee, or any combined or merged organization or successor in interest to the licensee, without the prior written consent of the client or the client's personal representative or assignee.

(B) A licensee is not prohibited from making a temporary transfer of working papers or other material necessary to the conduct of peer reviews or for the disclosure of information as provided by section (1)(b) of this rule.

(C) A licensee shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(D) A licensee shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

(E) Licensees must prepare and maintain for a period of at least five years, the working papers and other information related to any attest service or audit report prepared by the licensee in sufficient detail to support the conclusions reached in such report.

(i) The five-year retention period described in paragraph (E) of this rule shall apply to working papers prepared prior to January 1, 2004, but only to the extent that such working papers are required to be retained for a total of five years, including the period of retention that was cumulated prior to January 1, 2004. No working papers shall be required to be maintained longer than five years, unless a longer period is required for purposes of a Board investigation as provided in paragraph (D) of this subsection and OAR 801-010-0115(3).

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04

801-030-0020

Other Responsibilities and Practices

(1) **Professional misconduct.**

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

ADMINISTRATIVE RULES

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including advertising or solicitation by direct personal communication, having reference to the licensee's professional services which contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim which:

(a) Includes a misrepresentation of fact;

(b) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(c) Includes any testimonial or laudatory statement, or other statement or implication about the services that is not based on verifiable fact;

(d) Is intended or likely to create false or unjustified expectations of favorable results;

(e) Implies educational or professional attainments or licensing recognition not supported in fact;

(f) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(g) Falsely represents that professional services can or will be competently performed for a stated fee, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(h) Contains other representations or implications that may cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations.** A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee if such representation contains a false, fraudulent, misleading, or deceptive statement or claim within the meaning of section (4) of this rule.

(6) Firm names.

(a) False and misleading firm names.

(A) Licensees shall not practice public accountancy under a firm name which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or managers of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business form of the firm, the nature of the services provided or the identity of individual members of the firm, and shall not include information about, or indicate an association with, individuals who are not members of the firm;

(C) A firm name shall include words or abbreviations sufficient to identify the form of business organization or legal entity being used by the firm as required by the laws under which the business organization is organized.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor. A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements of this rule.

(b) **Singular firm names.** A Certified Public Accountant or Public Accountant in individual practice may use, in a title or designation, the individual's full legal name in the singular form, which may be followed by the title "Certified Public Accountant," "Public Accountant," "CPA" or "PA".

(c) Plural firm names.

(A) Firms may use a plural title or designation, including words like "company", "and company", "associates" and "accountants", only if the firm employs at least one staff person, working a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance.

Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (7)(a)(B) of this rule.

(e) **Notice to Board.** A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail, addressed to the licensee at the last official address or to the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein and if the client expects the licensee to exercise the licensee's professional judgment therein, unless the client has consented to the transaction after full disclosure in writing. Disclosure shall be made prior to the time the business transaction is initiated.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) **Notification of change of address,** employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

ADMINISTRATIVE RULES

(b) The name and address of licensee's current employer; and
(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) **School loan defaults.** In accordance with ORS 348.393 to 348.399, the Board shall provide the Oregon State Scholarship Commission ("Commission") with certification and licensing information that may be electronically cross-matched with the Commission's post default database.

(a) The Board shall refuse to issue or renew or shall suspend the certificate or license and permit of any licensee who is in default on any student loan guaranteed or insured by the Commission, or who is not repaying such loan in a satisfactory manner as determined by the Commission and in accordance with federal regulations.

(b) Pursuant to ORS 348.393(3), the Board shall notify a licensee of any action being taken against the licensee at the direction of the Commission, and shall refer the licensee to the Commission for resolution of any dispute regarding school loans.

(c) Upon notification by the Commission and receipt of a release notice that a licensee has met satisfactory borrower repayment status, the Board shall issue, renew, or reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(11) **Child support defaults.** In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(12) **State tax defaults.** In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.160, ORS 673.410, ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04

Adm. Order No.: BOA 7-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-040-0070, 801-040-0090, 801-040-0100, 801-040-0160

Subject: These rules are being amended to clarify requirements for reporting CPE credit.

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

801-040-0070

Verification

(1) The Board will verify CPE reports submitted by licensees on a random basis. Licensees are required to submit a certificate of completion or similar documentation that confirms attendance at the program and the number of eligible CPE hours.

(2) Upon request by the Board, licensees are required to provide a written statement describing how each reported CPE program directly contributes to the licensee's professional competency.

(3) Licensees who do not meet CPE requirements described in OAR 801-040-0010 and section (2) of this rule will be notified of the deficiency and a designated number of days will be allowed for the applicant to correct the deficiencies.

Stat. Auth.: ORS 670.310, ORS 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04

801-040-0090

Reinstatement Requirements: Lapsed, Suspended or Inactive to Active Status

(1) Lapsed permits. Permits that are not properly renewed shall lapse. To reinstate a "lapsed" permit the holder of such permit shall:

(a) Provide a detailed written description of the business and professional activities of the holder of such permit during the period of lapse, stating whether the licensee was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the active renewal fee for each renewal period that the permit was lapsed, and

(d) Complete and report the appropriate CPE requirements described in this rule, plus an additional 16 CPE hours as required by OAR 801-040-0160(1) prior to reinstatement.

(e) All CPE hours submitted for reinstatement must meet the requirements for CPE credit under these rules.

(f) After July 1, 2001, all applicants for reinstatement are required to complete and report four CPE hours in professional conduct and ethics.

(2) Permits lapsed within the first renewal period. Holders of permits that lapse within the first renewal period shall complete and report the number of CPE hours that were required to renew the permit at its last expiration date.

(3) Permits lapsed more than two, but less than five years. Holders of permits that lapse more than two, but less than five years shall:

(a) Complete and report 80 CPE hours, which shall be completed within the 12-month period immediately preceding the date of application for reinstatement. The hours required shall include at least 24 hours in financial accounting and reporting; and

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, such hours to be completed at a rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(4) Permits lapsed more than five years. Holders of permits that lapse more than five years shall:

(a) Complete and report 160 CPE hours which shall be completed within the 24-month period immediately preceding the date of application for reinstatement. The hours required shall include at least 48 hours in financial accounting and reporting; and

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; or,

(c) In lieu of reporting CPE required by subsections (a) and (b) of this section, the holder of a lapsed permit may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the conditioning requirements of OAR 801-010-0060.

(5) Suspended permits. To reinstate a permit that is suspended under ORS 673.170, the holder of such permit shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the Order of Suspension; and

(b) Meet the requirements for reinstatement of an inactive permit as stated in this rule.

(6) Inactive permits. To reinstate a permit from inactive to active status, the holder of such permit shall meet the requirements for reinstatement

ADMINISTRATIVE RULES

of lapsed permits described in section (1) of this rule, with the following exceptions:

(a) Payment of the active renewal fee described in subsection (1)(c) of this rule for each renewal period that the permit was inactive is not required for reinstatement from inactive to active status; and

(b) The 16 hour CPE penalty described in subsection (1)(d) of this rule, is not required for applicants reinstating from inactive to active status.

(7) Permit holders in other jurisdictions. Licensees who hold an active permit to practice public accountancy issued under the laws of another jurisdiction, and who wish to reinstate an Oregon permit that has been lapsed or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active permit to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement until the end of the renewal period in which reinstatement occurs.

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.050, ORS 673.410
Stats. Implemented: ORS 673.165, ORS 673.210

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04

801-040-0100

New Permits

(1) CPE Requirement for new licensees.

(a) Licensees who receive an initial permit to practice public accountancy shall comply with the CPE requirements from the date of issuance of the permit on a prorated basis calculated at 3-1/3 CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the permit is issued.

(b) The 24-hour annual CPE requirement shall also be prorated at two (2) CPE hours per month, including the month of issuance, until June 30 of the renewal period in which the permit was issued.

(c) CPE hours earned during any month of the two-year renewal cycle during which the initial permit was issued shall be eligible for credit to meet the CPE requirement.

(2) Requirement for licensed public accountants who become licensed as certified public accountants. Licensees who hold a permit to practice public accountancy as a licensed Public Accountant under ORS 673.100, and who receive an initial certificate and permit to practice public accountancy as a certified public accountant shall, in addition to the requirement under section (1) of this rule, complete and report 3-1/3 CPE hours for each month of the renewal period during which the person held a permit as a Public Accountant. CPE hours earned during any month of the two-year renewal cycle during which the initial permit was issued shall be eligible for credit to meet this requirement.

Stat. Auth.: ORS 670.310, ORS 673.040, ORS 673.050, ORS 673.410
Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1989, f. & cert. ef. 3-13-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04

801-040-0160

Failure to Comply

(1) 16-hour CPE penalty. Licensees who submit an application for renewal of a permit and who have not complied with the CPE requirements as described in OAR 801-040-0010 are required to complete and report an additional 16 hours of qualifying CPE.

(2) Failure to comply with CPE requirements. Licensees who do not meet the CPE requirements are subject to disciplinary action under ORS 673.170(L), unless CPE requirements have been waived under OAR 801-040-0150.

Stat. Auth.: ORS 670.310, ORS 673.410

Stat. Implemented: ORS 673.165, ORS 673.170

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04

.....

Adm. Order No.: BOA 8-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 801-050-0080

Subject: Housekeeping

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

801-050-0080

Standards for Peer Review Programs

Peer Review programs approved by the Board are required to meet the *Standards for Performing and Reporting on Peer Reviews*, issued by the AICPA.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638 sec 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 8-2003, f. 12-23-03 cert. ef. 1-1-04

.....

Board of Nursing

Chapter 851

Adm. Order No.: BN 14-2003(Temp)

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-23-03 thru 6-19-04

Notice Publication Date:

Rules Adopted: 851-050-0161

Rules Amended: 851-050-0133, 851-050-0134, 851-050-0145, 851-050-0155, 851-050-0170

Rules Suspended: 851-050-0150

Subject: Senate Bill 708 (2003 Legislative Session) deleted the current authority of nurse practitioners to dispense drugs when employed by a college or university student health center. This authority will be nullified when the law takes effect on January 1, 2004. In addition, Senate Bill 708 also eliminated the provisions for emergency drug dispensing for nurse practitioners in geographical areas where patients do not have readily available access to pharmacy services. These temporary rules promulgate new rules that meet the new requirements for drug dispensing authority for nurse practitioners pending the development of a drug dispensing program in conjunction with the Board of Pharmacy and implementation of new rules via the regular rulemaking process.

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

851-050-0133

Purpose and Scope

(1) Students shall be given the choice of taking their prescription to a community pharmacy located off campus.

(2) Drugs dispensed shall be prepackaged by a pharmacy registered by the Board or repackaged by a manufacturer registered by the Board.

(3) Such dispensing shall be limited to those agents in the following therapeutic classes for which the nurse practitioner is authorized to write prescriptions under ORS 678.390. Dispensing from asterisked therapeutic classes shall be limited to a seven day supply.

(a) Oral Contraceptives;

(b) Contraceptive Devices;

(c) Anti-infectives;

(d) Anti-inflammatories;

(e) Decongestants;

(f) Antihistamines*;

(g) Analgesics;

(h) Antidepressants*;

(i) Antitussives/ Expectorants;

(j) Gastrointestinals*;

(k) Inhaled metered dose bronchodilators and anti-inflammatories;

and

(l) Prenatal Vitamins.

Stat. Auth.: ORS 689.605

Stats. Implemented: ORS 689.605

Hist.: NB 3-1994, f. & cert. ef. 5-23-94; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 10-2003, f. & cert. ef. 10-2-03; BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0134

Drug Delivery and Control in the College Health Setting

(1) Dispensing:

(a) Drugs may be dispensed to the student by the nurse practitioner.

(b) Drugs shall be prepackaged by a pharmacy or manufacturer and provide on the label:

(A) The name and strength of the drug. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be on the label.

(B) The quantity of the drug;

(C) Cautionary statements, if any, required by law;

ADMINISTRATIVE RULES

(D) The name, address, and phone number of the student health center; and

(E) The manufacturer's expiration date, or an earlier date if preferable, after which the patient should not use the drug.

(c) The nurse practitioner shall label prescription drugs with the following information:

- (A) Name of the patient;
- (B) Name of the prescriber;
- (C) Date of dispensing; and
- (D) Directions for use.

(d) The nurse practitioner shall personally dispense drugs to the patient.

(e) Drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act, unless the patient requests a non-complying container.

(f) The pharmacist and the nurse practitioner shall provide a means for patients to receive verbal and written information on drugs dispensed to the patient. The written drug information shall include:

- (A) Drug name and class;
 - (B) Proper use and storage;
 - (C) Common side effects;
 - (D) Precautions and contraindications; and
 - (E) Significant drug interactions.
- (2) Drug security, storage and disposal:

(a) In the absence of the nurse practitioner or the pharmacist, drugs shall be kept in a locked cabinet or drug room which is sufficiently secure to deny access to unauthorized persons. Only the nurse practitioner and the pharmacist shall have a key to the drug cabinet or drug room. In their absence, the drug cabinet or drug room shall be kept locked.

(b) All drugs shall be stored in areas which will assure proper sanitation, temperature, light, ventilation, and moisture control as required in official compendium, such as the United States Pharmacopeia or National Formulary.

(c) Drugs which are outdated, damaged, deteriorated, misbranded, or adulterated shall be physically separated from other drugs until they are destroyed or returned to their supplier.

(d) Controlled substances, which are expired, deteriorated, or unwanted, shall be disposed of in conformance with current State and Federal Regulations including but not limited to 21 CFR 1307.21 and OAR 855-080-0105.

(3) Drug records:

(a) A drug dispensing record shall be maintained separately from the patient record and kept for a minimum of three years. The dispensing record shall show, at a minimum, the following:

- (A) Name of patient;
- (B) Brand name of drug, or generic name and manufacturer or distributor;
- (C) Date of dispensing; and
- (D) Initials of nurse practitioner.

(b) All records of receipt and dispersal of drugs shall be kept for a minimum of three years.

(c) All records required by these rules or by federal or state law shall be readily retrievable and available for inspection by the Board.

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

Stat. Auth.: ORS 689.605

Stats. Implemented: ORS 689.605

Hist.: NB 3-1994, f. & cert. ef. 5-23-94; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 3-2001, f. & cert. ef. 2-21-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0145

Requirements for Emergency Drug Dispensing Authority

Nurse practitioners with dispensing authority shall be responsible for safe storage, distribution, and destruction of all drugs under their authority.

Stat. Auth.: ORS 678.375 & ORS 678.390

Stats. Implemented: ORS 678.390

Hist.: NB 7-1987, f. & ef. 10-5-87; NB 4-1989(Temp), f. & cert. ef. 7-31-89; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0150

Renewal of Emergency Drug Dispensing Authority

(1) Emergency dispensing authority may be renewed with each renewal of prescriptive privileges, provided that the nurse practitioner continues to meet criteria in OAR 851-050-0145(1).

(2) Documentation that the clinic continues to meet criteria shall be provided by the nurse practitioner seeking authority, and by the dispensing site itself if requested.

Stat. Auth.: ORS 678.375 & 678.390

Stats. Implemented: ORS 678.390

Hist.: NB 7-1987, f. & ef. 10-5-87; BN 10-2003, f. & cert. ef. 10-2-03; Suspended by BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0155

Termination of Prescriptive or Dispensing Authority

(1) The Board may deny, suspend or revoke the authority to write prescriptions or dispense drugs for the causes identified in ORS 678.111(1) or proof that the authority has been abused.

(2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to nursing standards and is defined as:

(a) Prescribing, dispensing or distributing drugs not listed in the formulary;

(b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;

(c) Prescribing or distributing drugs to an individual whom is not the nurse practitioner's client or is not within the scope of practice or type of client population served;

(d) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards or practice;

(e) Selling, purchasing, trading, or offering to sell, purchase or trade any drug sample;

(f) Failure to notify the Board as required in OAR 851-050-0145(3).

Stat. Auth.: ORS 678.375 & ORS 678.390

Stats. Implemented: ORS 678.390

Hist.: NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0161

Dispensing Authority for Nurse Practitioners

"Qualified applicant" means an unencumbered Oregon certified Nurse Practitioner with prescriptive authority in good standing with the Oregon State Board of Nursing who has emergency drug dispensing authority pursuant to ORS 678.390 (Oregon Laws 2001) on December 31, 2003 or is authorized on December 31, 2003 to dispense drugs pursuant to ORS 689.605(7) (Oregon Laws 2001).

(1) Qualified applicants may make application to the Board of Nursing prior to January 1, 2004 for authority to dispense under this rule commencing January 1, 2004.

(2) The authority of Nurse Practitioners to dispense pursuant to ORS 678.390(2) (emergency drug dispensing authority) and ORS 689.605(7) (authority of nurse practitioners employed by a college or university student health center to dispense) expires on January 1, 2004, the effective date of SB 708.

(3) The authority to dispense prescription drugs granted under these rules shall expire no later than six months from the effective date of these rules.

(4) A qualified applicant may apply to the Oregon Board of Nursing for authority to dispense prepackaged prescription drugs. Such applicant must demonstrate a lack of readily available access to pharmacy services, and that the grant of dispensing authority to the applicant would correct this lack of access. The applicant shall also provide a list of classifications of drugs the applicant has previously been authorized to dispense, and show evidence of completion of the following program:

(a) Documented review of all materials listed below provided by the Board of Nursing relating to dispensing of prescription drugs:

(A) Board of Nursing handbook Nurse Practitioner Prescriptive Authority in Oregon;

(B) The Drug Enforcement Administration Pharmacist's Manual (2001);

(C) OAR 851 division 50;

(D) ORS Chapter 689 and OAR chapter 855;

(E) US Consumer Product Safety Commission publication "Poison Prevention Packaging: A Text for Pharmacists and Physicians," and;

(F) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (Nov.2003); and

(b) Successful examination by the Board of Nursing on these materials.

(5) The demonstration of a lack of readily available pharmacy services shall be established as provided in SB 708, section 1, paragraph (3)(b).

(6) Dispensing under this authority is limited to patients that meet any of the following criteria:

(a) Lack of patient access to a pharmacy due to the following:

(A) The patient lives outside the boundaries of a metropolitan statistical area as defined by the federal Office of Management and Budget;

(B) The patient lives 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area as defined by the federal Office of Management and Budget; or

ADMINISTRATIVE RULES

(C) The patient lives in a county with a population of less than 75,000.
(b) The patient faces a financial barrier to purchase prescriptions, including but not limited to:

(A) The patient receives services from a health care safety net program;

(B) The patient participates in a patient assistance program of a pharmaceutical company;

(7) The dispensing authority granted under this rule shall be limited to those classifications of drugs the applicant had previously dispensed.

(8) The staff of the Board of Nursing shall provide written notice within two working days to the Board of Pharmacy upon approval of such application.

(9) Nurse Practitioners granted dispensing authority under this rule shall comply with the labeling, record keeping and dispensing requirements of OAR 851, division 50 and ORS Chapter 689.

(10) A Nurse Practitioner granted dispensing authority under this rule shall have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications.

(11) Nurse Practitioners granted dispensing authority under this rule shall permit representatives of the Oregon State Board of Pharmacy, upon receipt of a complaint, to inspect a dispensing site after prior notice to the Oregon State Board of Nursing.

(12) Applicants must provide complete and accurate information requested by the Board. Failure to complete application material as requested, or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

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

Stats. Implemented: ORS 678.390, 689.605

Hist.: BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

851-050-0170

Rules Relating to Controlled Substances

(1) In the administration, distribution, storage, prescribing, and dispensing of controlled substances, nurse practitioners shall comply with all applicable requirements in the Code of Federal Regulations (CFR), Title 21, and state law including but not limited to ORS Chapter 430 and 475 and OAR chapter 415 and 855.

(2) Nurse practitioners who have authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances must verify evidence of such with their prescriptive authority renewal application. A nurse practitioner may choose to decline DEA certification, and must verify so in writing.

(3) Storage and Inventory of Controlled Substances:

(a) Samples or quantities of controlled substances shall be stored in a securely locked cabinet on the premises of the nurse practitioner's practice location.

(b) Nurse practitioners who receive samples or quantities of controlled substances shall be responsible for the security and inventory of these drugs.

(c) Nurse practitioners shall maintain inventory records of controlled substances that they receive or distribute, for a period of three years. The records shall include:

(A) Drug name, amount received, date received, drug expiration date;

(B) Drug name, amount distributed, date distributed, to whom distributed;

(C) Drug name and the date and place where it was returned for destruction.

(d) Controlled substances that are expired, deteriorated, or unwanted shall be returned to a DEA registered disposal facility. This does not include controlled substances which are properly wasted at the facility where they were to be administered. In this context, "properly wasted" means the on-site destruction of a controlled substance in conformance with applicable state and federal law. Nurse practitioners shall not personally destroy controlled substances.

(e) Controlled substances must be transported in a secured, locked container.

(f) Client records shall state the distribution of controlled substance samples.

(g) Nurse practitioners who receive controlled substances shall cooperate with the Board in their inspection of records and physical inventory of controlled substances. Inventory of all controlled substances shall be taken by nurse practitioners responsible for their receipt and storage every year on the same date as the biennial inventory required by 21 CFR 1304.13.

(h) If requested by the Board, any nurse practitioner who receives controlled substances shall submit a copy of inventory records from the preceding two years for review.

(4) Prescribing Controlled Substances:

(a) Nurse practitioners shall only prescribe the controlled substances from Schedules II-V, as authorized by the Oregon State Board of Nursing. Nurse practitioners shall only prescribe at the level provided for on their DEA certificate.

(b) No controlled substances shall be prescribed by nurse practitioners unless included on the nurse practitioner formulary.

(c) Schedule II controlled substances shall not be prescribed for the purposes of weight reduction or control. Schedule III-IV controlled substances may be prescribed by nurse practitioners for weight reduction in accordance with FDA product guidelines.

(d) Nurse practitioners shall not prescribe or order controlled substances, including Methadone, for narcotic addiction treatment.

(5) Intractable Pain Management:

(a) Nurse practitioners may prescribe or administer controlled substances to a person in the course of their treatment for a diagnosed condition causing intractable pain, defined in OAR 851-050-0000.

(b) The diagnosis and treatment of intractable pain requires documentation of the following:

(A) Recent diagnosis of the condition (if acute or unstable), or past diagnosis (if chronic and stable) causing pain, by one or more licensed practitioners specializing in the treatment of the body area, system, or organ perceived as the source of intractable pain; and

(B) Consultation and review of the treatment plan with a licensed nurse practitioner or physician who is a recognized expert in pain management.

(c) Nurse practitioners must have a complete discussion with the patient or person authorized to make health care decisions for the patient regarding the diagnosis, as well as the risk, benefits, alternatives, side effects and potential for addiction and withdrawal of the controlled substance, along with any other applicable precautions. These discussions must be documented in the patient record. Documentation must include a plan for periodic review of patient response and follow-up.

(d) Nurse practitioners shall document patient use of controlled substances for chronic or intractable pain, including history and assessment to rule out substance abuse. Evidence of patient addiction to or abuse of controlled substances requires referral and/or transfer of care for diagnosis and treatment of the addiction.

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

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

Stats. Implemented: ORS 678.375, 678.380, 678.385 & 678.390

Hist.: BN 5-2000, f. & cert. ef. 4-24-00; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 14-2003(Temp), f. & cert. ef. 12-23-03 thru 6-19-04

Board of Parole and Post-Prison Supervision Chapter 255

Adm. Order No.: PAR 1-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 10-1-03

Rules Amended: 255-070-0001

Subject: The amendment is necessary so that the Board's rule and exhibit will be consistent with the Oregon Revised Statutes.

Rules Coordinator: Cindy Hanners—(503) 945-0903

255-070-0001

Conditions Not Limited by Exhibit J

(1) The Board may order parole conditions pursuant to OAR 255-070-0015.

(2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-011-0001.

(3) Conditions of parole and post-prison supervision are not limited to those shown in **Exhibit J**.

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

Stat. Auth.: ORS 144.096, 144.102, 144.270

Stats. Implemented:

Hist.: 2PB 15-1985, f. & ef. 5-31-85; 2PB 1-1986(Temp), f. & ef. 11-3-86; PAR 2-1987, f. & ef. 4-1-87; PAR 5-1988(Temp), f. & ef. 4-15-88; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 17-1988, f. & ef. 10-18-88; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 4-1990, f. & cert. ef. 6-29-90, cert. ef. 7-1-90; PAR 3-1992, f. & cert. ef. 4-15-92; PAR 4-1992(Temp), f. & cert. ef. 4-30-92; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1993, f. & cert. ef. 10-15-93; PAR 5-1993(Temp), f. & cert. ef. 12-3-93; PAR 1-1994, f. & cert. ef. 4-4-94; PAR 3-1994, f. & cert. ef. 11-9-94, cert. ef. 12-1-94; Administrative correction 8-14-97; PAR 5-1998, f. & cert. ef. 11-9-98; PAR 2-1999, f. & cert. ef. 1-15-99; PAR 6-1999(Temp), f. & cert. ef. 9-15-99 thru 3-12-00; PAR 9-1999, f. & cert. ef. 11-15-99; PAR 5-2000, f. & cert. ef. 5-22-00; PAR 6-2001(Temp), f. & cert. ef. 1-1-02 thru 6-29-02; PAR 3-2001, f. & cert. ef. 2-29-02; PAR 5-2002(Temp), f. & cert. ef. 4-15-02 thru 10-11-02; PAR 8-2002, f. & cert. ef. 6-17-02; PAR 4-2003(Temp), f. & cert. ef. 6-13-03 thru 12-9-03; PAR 6-2003, f. & cert. ef. 10-10-03; PAR 1-2004, f. & cert. ef. 1-14-04

ADMINISTRATIVE RULES

Adm. Order No.: PAR 2-2004(Temp)
Filed with Sec. of State: 1-14-2004
Certified to be Effective: 1-14-04 thru 7-11-04
Notice Publication Date:
Rules Amended: 255-060-0011

Subject: The amendment of the rules is necessary to be consistent with the Department of Corrections approval of a new sex offender risk assessment scale. This new sex offender risk assessment scale is applicable to offenders being released on and after May 1, 2004.
Rules Coordinator: Cindy Hanners—(503) 945-0903

255-060-0011

Procedures for Predatory Sex Offender

(1) For purposes of this rule, a person is a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use only the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II) which have been approved by the Department of Corrections as required by ORS 181.585(2).

(2) The procedures set forth in this rule only apply to inmates or offenders released from a Department of Corrections institution on or after May 1, 2004, after serving a sentence of more than 12 months. Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before May 1, 2004, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a predatory sex offender if the inmate or offender scores four or more points on the STATIC-99.

(4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

(5) Subject to the procedures set forth below, inmates or offenders who score four or more points on the STATIC-99 have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

(a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).

(b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before a predatory sex offender finding is made.

(c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before making a predatory sex offender finding. The Board shall make the predatory sex offender finding if there is evidence to support a score on the STATIC-99 of four or more points.

(6) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections or to participate in a hearing, the Board may make the predatory sex offender finding if the inmate's or offender's score on the STATIC-99 is four or more points.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

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

Stat. Auth.: Ch. 163, 1999 OL

Stats. Implemented:

Hist.: PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; PAR 4-2002, f. & cert. ef. 3-12-02; PAR 5-2003, f. & cert. ef. 10-10-03; PAR 2-2004(Temp), f. & cert. ef. 1-41-04 thru 7-11-04

Board of Pharmacy
Chapter 855

Adm. Order No.: BP 3-2003(Temp)
Filed with Sec. of State: 12-29-2003

Certified to be Effective: 12-31-03 thru 6-28-04

Notice Publication Date:

Rules Adopted: 855-043-0210

Subject: Temporary rule is adopted to meet the statutory requirement of Joint Rule Making with the Board of Nursing as defined in 2003 SB 708. This bill requires the Board of Pharmacy to jointly adopt rules with the Board of Nursing and create a training program for Nurse Practitioner Dispensing. These temporary rules promulgate new rules that meet the new requirements for drug dispensing authority for nurse practitioners currently dispensing under authority of the Board of Nursing for emergency dispensing or under authority of the Board of Pharmacy in college or university student health centers, pending the development of a drug dispensing program in conjunction with the Board of Pharmacy and implementation of new rules via the regular rulemaking process.

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

855-043-0210

Nurse Practitioner Dispensing

"Qualified applicant" means an unencumbered Oregon certified Nurse Practitioner with prescriptive authority in good standing with the Oregon State Board of Nursing who has emergency drug dispensing authority pursuant to ORS 678.390 (Oregon Laws 2001) on December 31, 2003 or is authorized on December 31, 2003 to dispense drugs pursuant to ORS 689.605(7) (Oregon Laws 2001).

(1) Qualified applicants may make applications to the Board of Nursing prior to January 1, 2004 for authority to dispense under this rule commencing January 1, 2004.

(2) The authority of Nurse Practitioners to dispense pursuant to ORS 678.390(2) (emergency drug dispensing authority) and ORS 689.605(7) (authority of nurse practitioners employed by a college or university student health center to dispense) expires on January 1, 2004, the effective date of SB 708.

(3) The authority to dispense prescription drugs granted under these rules shall expire no later than six months from the effective date of these rules.

(4) A qualified applicant may apply to the Oregon Board of Nursing for authority to dispense prepackaged prescription drugs. Such applicant must demonstrate a lack of readily available access to pharmacy services, and that the grant of dispensing authority to the applicant would correct this lack of access. The applicant shall also provide a list of classifications of drugs the applicant has previously been authorized to dispense, and show evidence of completion of the following program:

(a) Documented review of all materials listed below provided by the Board of Nursing relating to dispensing of prescription drugs:

(i) The Board of Nursing handbook Nurse Practitioner Prescriptive Authority in Oregon;

(ii) The Drug Enforcement Administration Pharmacist's Manual (2001);

(iii) OAR 851 division 50;

(iv) ORS Chapter 689 and OAR Chapter 855;

(v) US Consumer Product Safety Commission publication Poison Prevention Packaging: A Text for Pharmacist's and Physicians, and;

(vi) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (Nov.2003); and

(b) Successful examination by the Board of Nursing on these materials.

(5) The demonstration of a lack of readily available pharmacy services shall be established as provided in SB 708, section 1, paragraph (3)(b).

(6) Dispensing under this authority is limited to patients that meet any of the following criteria:

(a) Lack of patient access to a pharmacy due to the following:

(A) The patient lives outside the boundaries of a metropolitan statistical area as defined by the federal Office of Management and Budget;

(B) The patient lives 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area as defined by the federal Office of Management and Budget; or

(C) The patient lives in a county with a population of less than 75,000.

(b) The patient faces a financial barrier to purchase prescriptions, including but not limited to:

(A) The patient receives services from a health care safety net program;

(B) The patient participates in a patient assistance program of a pharmaceutical company.

(7) The dispensing authority granted under this rule shall be limited to those classifications of drugs the applicant had previously dispensed.

ADMINISTRATIVE RULES

(8) The staff of the Board of Nursing shall provide written notice within two working days to the Board of Pharmacy upon approval of such application.

(9) Nurse Practitioners granted dispensing authority under this rule shall comply with the labeling, record keeping and dispensing requirements of OAR 851, division 50 and ORS Chapter 689.

(10) A Nurse Practitioner granted dispensing authority under this rule shall have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications.

(11) Nurse Practitioners granted dispensing authority under this rule shall permit representatives of the Oregon State Board of Pharmacy, upon receipt of a complaint, to inspect a dispensing site after prior notice to the Oregon State Board of Nursing.

(12) Applicants must provide complete and accurate information requested by the Board of Nursing. Failure to complete application material as requested, or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

Stat. Auth.: ORS 689.205, 2003 OL, Ch. 617

Stats. Implemented: ORS 689.205

Hist.: BP 3-2003(Temp), f. 12-29-03, cert. ef. 12-31-03 thru 6-28-04

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 6-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 839-017-0500, 839-017-0505, 839-017-0510, 839-017-0515, 839-017-0520

Rules Amended: 839-017-0004

Subject: The rules adopted and amended conform the agency's existing rules to the provisions of SB 341 (2003 Legislature) pertaining to employment listing services. In addition to adopting the definition of "employment listing service" in SB 341, as required by the legislation, the rules prescribe the terms of contracts that an employment listing service requires an individual who uses its services to sign; regulate the conditions by which fees may be charged by an employment listing service for its services; and prescribe the method that an employment listing service uses to conform and keep current the list of specified positions of employment available with an employer that the employment listing service provides to individuals.

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

839-017-0004

Definitions

As used in ORS 658.005 to 658.245 and in these rules unless the context requires otherwise:

(1) "Advertising" means any material or means used by the employment agency for solicitation or promotion of business. This includes, but is not limited to, business cards, notices or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It may also mean referral cards, invoices, letterheads, or other forms if such forms are used in combination with solicitation and promotion of business.

(2) "Applicant for Employment" means an individual who is seeking or who has obtained employment through the services of an employment agency.

(3) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.

(4) "Charge for Services" means any money or other consideration paid or promised to be paid by an applicant for employment for services rendered by an employment agency.

(5) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or the Commissioner's authorized deputies and officers.

(6) "Employment listing service" means a business operated by a person that:

(a) Provides lists of specified positions of employment available with an employer listing service or that holds itself out to individuals as able to provide information about specific positions of employment with an employer other than the employment listing service;

(b) Charges an individual a fee for its services; and

(c) Does not arrange or set up interviews between an individual and a prospective employer or otherwise intercede between an individual and a prospective employer but may offer limited counseling and employment-related services to an individual that includes, but is not limited to, person-

al grooming and appearance and interview preparation.

(7) "Engaged in Procuring for a Fee, Employment for Others and Employees for Employers" as used in ORS 658.005(3) means all actions of an employment agency leading up to and including the placing of job applicants in employment with others, provided a charge for services is paid to the employment agency by an applicant. Such actions include but are not limited to:

(a) Assisting an individual in completing the agency's application form or other documents detailing the individual's work experience and general qualifications for employment;

(b) Interviewing an individual in connection with specific job openings or in connection with the agency's general practice and procedure for determining the experience and qualifications of an applicant for employment;

(c) Referring individuals to prospective employers pursuant to job orders obtained from said employers;

(d) Soliciting and obtaining job orders from employers;

(e) Recruiting individuals to fill job orders obtained from employers;

(f) Advertising for individuals to fill job orders obtained from employers;

(g) Other activities that cause, acquire, gain, get or bring about the placement of individuals in employment.

(8) "Fee Paid Position" means a position in which under no circumstances is the applicant for employment who is identified, appraised, referred, or recommended charged a deposit, retainer, fee or any other charge for services directly or indirectly at any time in connection with such position.

(9) "Violation" means a transgression of any statute, rule or order, or any part thereof and includes both acts and omissions.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78; BL 10-1987(Temp), f. 9-30-87, ef. 10-1-87; BL 8-1988 f. & cert. ef. 5-16-88, Renumbered from 839-017-0176; BL 6-1997, f. & cert. ef. 11-13-97; BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

839-017-0500

Contracts Between Employment Listing Services and Individuals

(1) Before collecting a fee from an individual, Employment Listing Services must comply with the following provisions:

(a) The Employment Listing Service must execute a written contract with the individual; and

(b) The Employment Listing Service must provide a copy of the contract to the individual.

(2) Written contracts between an Employment Listing Service and individuals must include the following information:

(a) The name, physical address, mailing address if any, and telephone number of the Employment Listing Service;

(b) The name, address, and telephone number of the individual;

(c) A statement that the Employment Listing Service is registered with the Corporation Division pursuant to OAR 839-017-0515;

(d) The effective dates of the contract;

(e) The signature of an authorized Employment Listing Service representative and date of signature;

(f) The signature of the individual contracting with the Employment Listing Service and date of signature;

(g) The fee schedule of the Employment Listing Service as provided in OAR 839-017-0505;

(h) A description of the information that will be provided by the Employment Listing Service to the individual, including but not limited to:

(A) The format of the information to be provided (e.g., written publication, internet information, by telephone);

(B) How and when the information may be accessed by the individual; and

(C) When updates will be made to the information.

(i) A statement specifying the frequency of verification of the availability of positions by the Employment Listing Service;

(j) Any contract terms which may be changed by the Employment Listing Service and notification provisions relating to such changes;

(k) Provisions for and terms of any contract extensions;

(L) Any contract cancellation provisions;

(m) Any guarantees of the Employment Listing Service;

(n) Refund terms and conditions if any; and

(o) The following statements:

(A) "In addition to the penalties provided under ORS 658.115 and 658.991, an employment listing service shall forfeit any fees received from an individual if the employment listing service fails to provide to the individual a copy of:

(i) The fee schedule that the employment listing service charges;

ADMINISTRATIVE RULES

(ii) All contracts entered into between the employment listing service and the individual; and any changes in the fees that the employment listing service charges an individual who uses its service.” and

(B) “READ BEFORE SIGNING — This is a contract. You understand that (Name of Employment Listing Service) provides information on bona fide job listings but does not guarantee you will be offered a job. You also understand you are liable for the payment of the fee when you receive the list or job listing information. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it.”

(3) There may be no oral agreements or additions to any contract between an Employment Listing Service and individual. Any terms, conditions, or understandings between an Employment Listing Service and individual must be in writing.

(4) Employment Listing Services must retain copies of all contracts for no fewer than three years from the execution date of the contract.

Stat. Auth.: ORS 658.210; Other Auth SB 341 (2003 Legislature)
Stats. Implemented: ORS 658-005 - 658-991
Hist.: BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

839-017-0505

Fees Charged by Employment Listing Services

(1) Before collecting a fee from an individual, Employment Listing Services must comply with the following provisions:

(a) The Employment Listing Service must publish a schedule of its fees; and

(b) The Employment Listing Service must provide a copy of its schedule of fees to the individual.

(2) The schedule of fees required in this section may be incorporated in the contract between an Employment Listing Service and individual or may be a separate document incorporated by reference in the contract required by OAR 839-017-0500.

(3) Employment Listing Service fee schedules must include the following information:

(a) The effective dates of the fee schedule;

(b) The specific services provided by the Employment Listing Service and fee for each service;

(c) When fees are required to be paid to an Employment Listing Service by an individual;

(d) The circumstances under which any additional fees may be charged by an Employment Listing Service to an individual;

(e) Any payment terms, including any interest charges which may be assessed; and

(f) The following statement: “In addition to the penalties provided under ORS 658.115 and 658.991, an employment listing service shall forfeit any fees received from an individual if the employment listing service fails to provide to the individual a copy of:

(A) The fee schedule that the employment listing service charges;

(B) All contracts entered into between the employment listing service and the individual; and

(C) Any changes in the fees that the employment listing service charges an individual who uses its service.”

(4) Notwithstanding the provisions of OAR 839-017-0505(3)(f), if the schedule of fees is included in the contract as provided in OAR 839-017-0505(2), the statement required by OAR 839-017-0505(3)(f) is only required once in the contract.

Stat. Auth.: ORS 658.210; Other Auth SB 341 (2003 Legislature)
Stats. Implemented: ORS 658-005 - 658-991
Hist.: BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

839-017-0510

Confirmation of Position Availability by Employment Listing Services

(1) Employment Listing Services must confirm and document in writing the availability of positions included in the information provided to individuals at least once every ten business days.

(2) Employment Listing Services must document in writing the following information for each position listing published and confirmed thereafter:

(a) The name and address of the company where the position is located;

(b) The date the information regarding the position is received by the Employment Listing Service;

(c) The name, title, and telephone number of the person providing the position information to the Employment Listing Service;

(d) The name of the Employment Listing Service representative receiving the information about the position;

(e) The job title of the position;

(f) The requirements of the position;

(g) Whether the position is “full time” (32 or more hours/week) or

“part time” (fewer than 32 hours/week);

(h) The location of the position;

(i) The salary, hourly pay rate, or salary or hourly pay range for the position; and

(j) How individuals may apply for the position.

(3) Employment Listing Services must remove a listing from any and all of its publications by the end of the first business day after receiving notice that the position is no longer available.

(4) Employment Listing Services must retain copies of the information obtained about positions for no less than one year from the date the information is obtained.

Stat. Auth.: ORS 658.210; Other Auth SB 341 (2003 Legislature)
Stats. Implemented: ORS 658-005 - 658-991
Hist.: BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

839-017-0515

Employment Listing Services Required to be Registered

Employment Listing Services must be actively registered with the Corporation Division of the Oregon Secretary of State’s Office.

Stat. Auth.: ORS 658.210; Other Auth SB 341 (2003 Legislature)
Stats. Implemented: ORS 658-005 - 658-991
Hist.: BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

839-017-0520

Fee Forfeiture Provisions

In addition to the penalties provided under ORS 658.115 and 658.991, an Employment Listing Service shall forfeit any fees received as a result of any violation of the following provisions:

(1) Failure to provide a copy of the fee schedule that the Employment Listing Service charges an individual for its services to the individual;

(2) Failure to provide a copy of the contract entered into between an Employment Listing Service and an individual to the individual; or

(3) Failure to provide a copy of any changes in the fees that the Employment Listing Service charges an individual who uses its services to the individual.

Stat. Auth.: ORS 658.210; Other Auth SB 341 (2003 Legislature)
Stats. Implemented: ORS 658-005 - 658-991
Hist.: BLI 6-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: BLI 7-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 839-001-0200, 839-001-0490, 839-020-0027

Rules Amended: 839-001-0420, 839-001-0470, 839-020-0030, 839-020-0115, 839-020-0125

Subject: The rules adopted and amended conform the agency’s rules to the provisions of HB 3544 (2003 Legislature) relating to garnishment processing fees; penalty wage liability for failure to pay wages upon termination of employment; and special provisions for the payment of wages at termination for employees employed by businesses primarily engaged in the sale of motor vehicles and farm implements who are paid on a commission basis. The rule revisions also update examples in the division 020 rules to reflect increases in the minimum wage. (These revisions are “housekeeping” in nature.)

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

839-001-0200

Deductions for Garnishment Processing Fee

(1) Pursuant to HB 3544 (2003 Legislature), if a garnishee that employs a debtor is required to make any payment under a writ of garnishment by reason of wages payable to the debtor, the garnishee may collect a \$1 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the provisions of ORS 18.735. The processing fee must be collected after the last payment is made under the writ. The fee shall be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ delivered to the garnishee.

(2) The fee provided for in this section may not be collected if withholding of the fee would reduce the debtor’s net disposable income below the minimum amount prescribed by ORS 23.186.

Stat. Auth.: ORS 651.060(4), 652, 653; Other Auth HB 3544(2003 legislature)
Stats. Implemented: ORS 18.838, 652.150, 653.261(1)
Hist.: BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

839-001-0420

Payment of Wages at Termination of Employment

(1) Except as provided in OAR 839-001-0440 and 839-001-0480, when an employer unilaterally discharges an employee or when the employee and the employer mutually agree to the termination of employment, all of the wages that have been earned but not paid, become due and payable not later than the end of the first business day after the discharge or termination. Except as provided in subsections (3) and (5) of this rule, when the employment terminates because of discharge or mutual agreement on a Saturday, Sunday or holiday, all wages earned and unpaid must be paid by not later than the end of the first business day after the employment termination.

(2) When the employee gives the employer notice of 48 hours or more (not including Saturday, Sunday and holidays) that the employee intends to quit employment, all wages that have been earned but not paid become due and payable on the last day of the employee's employment.

(3) When the employee fails to give the employer notice as provided in subsection (2) of this rule, all wages that have been earned but not paid, become due and payable within five days, excluding Saturdays, Sundays and holidays, of the date the employee quit or at the next regularly scheduled payday, whichever occurs first.

(4) When an employee employed pursuant to an unexpired contract which provides for a definite period of work, quits with or without notice, all wages earned but not paid become due and payable at the next regularly scheduled payday.

(5) When the employment terminates because of discharge, mutual agreement or the employee quits (with or without notice) and the employer is the Oregon State Fair and Exposition Center, a county fair or show, the County Fair Commission or other employer engaged in activities authorized by ORS 565.010 to 565.990, all wages earned and unpaid must be paid not later than the end of the second business day after the employment termination. This subsection does not apply to contractors, exhibitors or others which are not agencies, boards or commissions established in ORS 565.010 to 565.990.

(6) The provisions of this rule do not apply when the employee's employment with the employer is covered by a collective bargaining agreement, the terms of which provide for the payment of wages at termination of employment. However, if the collective bargaining agreement does not contain provisions for the payment of wages at termination of employment, the provisions of this rule are applicable.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140

Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-001-0470

Penalty for Failure to Pay Wages on Termination of Employment

(1) When an employer willfully fails to pay all or part of the wages due and payable to the employee upon termination of employment within the time specified in OAR 839-001-0420, 839-001-0430 and 839-001-0440, the employer will be subject to the following penalty:

(a) The wages of the employee will continue to accrue from the date the wages were due and payable until the date the wages are paid or until a legal action is commenced, whichever occurs first;

(b) The employee's wages will continue to accrue at the employee's hourly rate of pay times eight (8) hours for each day the wages are unpaid;

(c) The maximum penalty will be no greater than the employee's hourly rate of pay times 8 hours per day times 30 days.

(d) Except as provided in subsection (e), the wages of an employee that are computed at a rate other than an hourly rate (e.g. salaries) will be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned during the wage claim period (the period for which wages are owed and upon which the wage claim is based) by the total number of hours worked during the wage claim period.

(e) Notwithstanding subsection (d), when wages are earned based on commission, bonus, piece rate, or other methods not based on hours worked, the wages will be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned in the last 30 calendar days of employment by the total number of hours worked in the last 30 calendar days of employment. If the employee was employed for less than 30 days, the total wages earned during the entire period of employment will be divided by the number of hours worked during the entire period of employment.

(2) If the employer pays the full amount of unpaid wages within 12 calendar days after the written notice of such unpaid wages is sent by the employee or a person on behalf of the employee, the penalty may not exceed 100 percent of the employee's unpaid wages.

(a) If the employee or person on behalf of the employee fails to send the written notice of unpaid wages to the employer, the penalty may not exceed 100 percent of the employee's unpaid wages.

(b) Subsection (2) does not apply when the employer has violated

ORS 652.140, 652.145 one or more times in the year before the employee's employment ceased or the employer terminated one or more other employments on the same date that the employee's employment ceased.

(c) For purposes of determining when an employer has paid wages or compensation under this subsection, payment occurs on the date the employer delivers the payment to the employee or sends the payment by first class mail, express mail or courier service to the employee's last-known address.

(3) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1000 against any person who violates ORS 652.140 and 652.145 or any rule adopted pursuant thereto.

(4) When an employer shows that it was financially unable to pay the wages at the time the wages accrued, the employer will not be subject to the penalty provided for in OAR 839-001-0470. If an employer continues to operate a business or chooses to pay certain debts and obligations in preference to an employee's wages, there is no financial inability.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.150

Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-001-0490

Special Provisions for Payment of Wages at Termination for Employees of Businesses Primarily Engaged in the Sale of Motor Vehicles or Farm Implements Who are Paid on a Commission Basis

(1) When an employee of a business primarily engaged in the sale of motor vehicles or farm implements who is paid on a commission basis is terminated, unpaid commissions are not owed to the employee until all the terms and conditions of any agreement between the employer and employee concerning the method of payment of commissions are fulfilled. If no such agreement exists, the commission is due with all other earned and unpaid wages or compensation as provided in ORS 652.140.

(2) Notwithstanding the provisions of OAR 839-001-0470, when an employee who is paid on a commission basis is terminated by a business that primarily sells motor vehicles or farm implements and there is a dispute between the employer and employee concerning the amount of commission due upon termination, if the amount of unpaid commission is found to be less than 20 percent of the amount of unpaid commission claimed by the employee, the penalty wage may not exceed the amount of the unpaid commission or \$200, whichever is greater.

Stat. Auth.: ORS 651.060(4), 652, 653; Other Auth HB 3544(2003 legislature)

Stats. Implemented: ORS 18.838, 652.150, 653.261(1)

Hist.: BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-020-0027

Deductions for Garnishment Processing Fee

(1) Pursuant to HB 3544 (2003 Legislature), if a garnishee that employs a debtor is required to make any payment under a writ of garnishment by reason of wages payable to the debtor, the garnishee may collect a \$1 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the provisions of ORS 18.735. The processing fee must be collected after the last payment is made under the writ. The fee shall be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnisher under the writ or under any other writ delivered to the garnishee.

(2) The fee provided for in this section may not be collected if withholding of the fee would reduce the debtor's net disposable income below the minimum amount prescribed by ORS 23.186.

Stat. Auth.: ORS 651.060(4), 652, 653; Other Auth HB 3544(2003 legislature)

Stats. Implemented: ORS 18.838, 652.150, 653.261(1)

Hist.: BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-020-0030

Overtime — Generally

(1) Except as provided in OAR 839-020-0125 to 839-020-0135, all work performed in excess of forty (40) hours per week must be paid for at the rate of not less than one and one-half times the regular rate of pay when computed without benefits of commissions, overrides, spiffs, bonuses, tips or similar benefits pursuant to ORS 653.261(1). Similar benefits include, but are not limited to, discretionary bonuses, gifts, profit sharing, thrift and savings program, trusts, reimbursements for expenses, holiday, or vacation pay.

(2) Definitions:

(a) "Work week" means any seven (7) consecutive twenty four (24) hour period as determined by the employer. The beginning of the work week may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this rule. For purposes of overtime computation, each work week stands alone;

(b) "Regular rate", for purposes of overtime computation, means a

ADMINISTRATIVE RULES

regular hourly rate, but in no case will the regular hourly rate be less than the applicable statutory minimum wage rate. In the absence of an express agreement between the employer and the employee which specifies the regular hourly rate, the regular hourly rate is determined by dividing the total remuneration for employment in any work week (excluding commissions, spiffs, bonuses, tips or similar benefits), by the total number of hours actually worked in that work week for which such remuneration was paid. The division will be guided in the application and calculation of regular rate by **Title 29, Code of Federal Regulations, Part 778, Subpart C, D and E** except when expressly prohibited by ORS Chapter 653 or these rules.

(3) Methods for determining amount of overtime payment under different compensation agreements:

(a) Compensation based exclusively on hourly rate of pay:

(A) Where the employee is employed solely on the basis of a single hourly rate, the hourly rate is the "regular rate." For hours worked in excess of forty (40) hours in a work week the employee must be paid, in addition to the straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of forty (40);

(B) For example, a \$10 per hour rate will bring, for an employee who works 46 hours, a total weekly wage of \$490 (46 hours at \$10 plus six hours at \$5.00). In other words the employee must be paid an amount equal to \$10 per hour for 40 hours and \$15.00 per hour for the six hours of overtime, or a total of \$490.

(b) Compensation based upon piece-rate agreement:

(A) Where an employee is employed on a piece-rate basis, the regular hourly rate of pay is determined by adding together the total earnings, (excluding commissions, spiffs, bonuses, tips or similar benefits) for the work week and dividing this sum by the number of hours worked in the week for which such compensation is to be paid;

(B) For example, an employee who has earned \$500 during a 50 hour work week must be paid an additional sum of \$50 for the ten overtime hours, or a total of \$550 (50 hours at \$10 per hour and the ten overtime hours at \$5.00 per hour).

(c) Compensation based upon weekly salary agreement for regular work week of less than 40 hours:

(A) Where the employee is employed on a weekly salary for a regular work week of fewer than 40 hours, the regular hourly rate of pay is determined by dividing the salary by the number of hours agreed to be worked in the work week which such salary is intended to compensate;

(B) For example, if an employee is hired at a salary of \$525 and it is understood that this salary is compensation for a regular work week of 35 hours, the employee's regular rate of pay is \$15 per hour (\$525 divided by 35 hours). Thus, where the employee works in excess of 35 hours in a given work week such employee must be paid \$15 per hour for each of the first 40 hours and \$22.50 per hour (one and one-half times \$15) for each hour worked in excess of 40 hours in such work week.

(d) Compensation based upon a weekly salary agreement for a regular work week of 40 hours:

(A) Where the employee is employed on a weekly salary for a regular work week of 40 hours, the regular hourly rate of pay is computed by dividing the salary by 40 hours;

(B) For example, where an employee is hired at a salary of \$600 and it is understood that this weekly salary is compensation for a regular work week of 40 hours, the employee's regular rate of pay is \$15 per hour and such employee must be compensated at the rate of \$22.50 per hour for each hour worked in excess of 40 hours in such work week.

(e) Compensation based upon weekly salary agreement for regular workweeks of more than 40 hours:

(A) If the employee is employed on a weekly salary which is the agreed compensation for a set number of hours in excess of 40, the regular hourly rate of pay is determined by dividing the weekly salary by the set number of hours which such salary is intended to compensate;

(B) For example, where an employee is hired at a weekly salary of \$675 and it is understood that this weekly salary is compensation for a regular work week set at 45 hours, the employee's regular rate of pay is \$15 per hour and such employee must be paid an additional sum of \$37.50 for such work week or a total of \$712.50 (45 hours at \$15 per hour and the five overtime hours at \$7.50 per hour). The employee must be paid an additional \$22.50 per hour for each hour worked in excess of 45 hours in such work week.

(f) Compensation based upon an agreed fixed salary for fluctuating hours (fluctuating workweek method for payment of overtime):

(A) An employee employed on a fixed salary may have hours of work which vary from work week to work week and the salary may be paid to the employee pursuant to an understanding with the employer that such employee will receive such fixed amount of compensation for whatever hours the employee is called upon to work in a work week, whether few or many. Where there is a clear mutual understanding of the parties that the

fixed salary is compensation for the hours worked each work week, whatever their number, such a salary arrangement is permitted if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable statutory minimum wage rate for every hour worked in those work weeks in which the number of hours worked is greatest, and if the employee receives overtime compensation, in addition to such salary, for all hours worked in excess of 40, at a rate not less than one-half the regular rate of pay. Since, under such an arrangement, the number of hours actually worked will fluctuate from work week to work week, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the work week into the amount of the salary to obtain the applicable regular hourly rate for any given work week. Payment for overtime hours worked in excess of 40 hours in such work week at one-half such hourly rate in addition to the salary satisfies the requirements of this rule because such hours have already been compensated at the regular rate, under the salary arrangement. The following examples, based upon a weekly salary of \$400, are offered by way of illustration:

(i) Work week #1 — 50 hours worked; the employee's regular rate of pay is \$8 per hour and the employee must be paid an additional sum equal to one-half the regular rate times the ten overtime hours worked or \$40, making the total compensation for that work week \$440;

(ii) Work week #2 — 60 hours worked; the employee's regular rate of pay is \$6.67 per hour, which is less than the required state minimum wage rate. The employee must be paid an additional sum equal to the difference between the employee's weekly salary of \$400 and the total of the amount the employee earned at the minimum wage for 40 hours plus one and one-half times the minimum wage rate for the hours worked over 40 during the work week (40 hours X minimum wage rate + 20 hours X 1.5 X minimum wage rate).

(B) The fluctuating work week method for the payment of overtime does not apply to employers covered by the federal Family Medical Leave Act of 1993, 29 USC 2601, et. seq., who comply with the Code of Federal Regulations regarding the nonpayment of leave time authorized by the Act and the special exception pertaining to the payment of overtime under the fluctuating workweek method. (See 29 CFR, Part 825.206 (b) and (c)) Employers who select this method for paying overtime and who are covered by this Act but choose not to comply with 29 CFR 825.206, must comply with this rule.

(g) Fixed salary for periods other than work week: Where a salary covers a period longer than a work week, such as a month, it must be reduced to its work week equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wages by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular rate of pay and the amount of any overtime pay is determined as provided by this rule.

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

Stat. Auth.: ORS 183 & ORS 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 9-1996, f. & cert. ef. 10-8-96; BL 1-2002, f. & cert. ef. 1-9-02; BL 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-020-0115

Relationship of State and Federal Law

(1) The Bureau of Labor and Industries has been informed and has reason to believe that there exists confusion and uncertainty on the part of employers concerning the inter-relationship of the Federal Fair Labor Standards Act and the regulations adopted pursuant thereto and the State Minimum Wage Law and the administrative rules adopted thereunder.

(2) The purpose of this rule, therefore, is to inform employers of the proper application of the law and to direct them to authoritative sources in cases of doubt.

(3) Employers who are required to comply with the state and federal laws, regulations and rules referred to in section (1) of this rule are required to comply with all standards set by those laws, regulations and rules. When one set of standards differs from the other, the standards most advantageous to employees must be met. For example, when the state minimum wage requires a higher hourly rate to be paid than the federal minimum wage rate, the state rate must be paid. By paying the higher rate, the employer complies with both standards. Another example is when the employer may qualify for an exemption under the state law but not the federal law. In this case, the employer is required to comply with the federal law.

(4) Employers may contact the Technical Assistance Unit of the Bureau of Labor and Industries, 800 N.E. Oregon, #32, Portland, OR 97232 for more information on specific fact situations.

(5) The purpose of this rule is stated in section (2) of this rule. The rule should not be interpreted to mean anything other than this stated purpose.

Stat. Auth.: ORS 653

ADMINISTRATIVE RULES

Stats. Implemented: ORS 653.010 & 653.261
Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04

839-020-0125

Overtime Exemptions Pertaining to Employers Regulated Under the Federal Fair Labor Standards Act

(1) This rule applies to employers and employees subject to OAR 839-020-0030, Overtime Generally, by virtue of the repeal of ORS 653.020(7) by Section 2, Chapter 446, 1989 Oregon Laws.

(2) No employer shall be deemed to have violated OAR 839-020-0030 under the following circumstances:

(a) By employing any employee for a workweek in excess of that specified in OAR 839-020-0030 without paying the compensation for overtime employment prescribed therein; provided that, such employee received compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which the employee is employed; and, provided further that such employee is so employed as follows:

(A) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than 1,040 hours during any period of 26 consecutive weeks; or

(B) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of 52 consecutive weeks the employees shall be employed not more than 2,240 hours and shall be guaranteed not less than 1,840 hours (or not less than 46 weeks at the normal number of hours worked per week, but not less than 30 hours per week) and not more than 2,080 hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 or 2,080 hours in such period at rates not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(b)(1) and Sec. 7(b)(2), FLSA)

(b) By an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products, if:

(A) The annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes; and

(B) More than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which such enterprise is located; and

(C) Not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale; and

(D) Such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to the employee under ORS 653.025. (Reference: Sec. 7(b)(3), FLSA)

(c) By employing any employee for a workweek in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement specifies a regular rate of pay of not less than the minimum hourly rate provided in ORS 653.025 and compensation at not less than 1-1/2 times such rate for all hours worked in excess of such maximum workweek, and a weekly guarantee of pay for not more than 60 hours based on the rates so specified. (Reference: Sec. 7(f), FLSA);

(d) By employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified in OAR 839-020-0030, if the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable under ORS 653.025 and if more than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw of guarantee. (Reference: Sec. 7(i), FLSA);

(e) When an employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises

enters into an agreement or understanding arrived at between the employer and employee before performance of the work, that provides for a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for purposes of overtime computation and provides further that for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(j), FLSA);

(f) By employing an employee of a not for profit amusement or recreational establishment in excess of the applicable work week specified in OAR 839-020-0030 if the establishment does not operate for more than seven months in any calendar year, or if, the establishment's average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year. (Reference: Section 13(a)(3), FLSA);

(g) By employing an employee in excess of the applicable workweek specified in OAR 839-020-0030 when the employee is employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee. (Reference: Sec. 13(a)(5), FLSA)

(h) By employing an employee who is compensated on an hourly basis at a rate of not less than \$27.63 per hour and who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty consists of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system specifications;

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) A combination of duties described in paragraphs (A), (B), and (C) of this paragraph the performance of which requires the same level of skills. (Reference: Sec. 13 (a) (17), FLSA)

(3) The provisions of OAR 839-020-0030 do not apply when the provisions of Section 13(b), of the Fair Labor Standards Act apply to employees as follows:

(a) Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; or

(b) Any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part I of the Interstate Commerce Act; or

(c) Any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act; or

(d) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(e) Any employee employed as a seaman; or

(f) Any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located in a city or town of 100,000 population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000, or is located in a city of 25,000 population or less, which is part of such an area but is at least 40 air-line miles from the principal city in such area; or

(g) Any sales person, parts person or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(h) Any sales person primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a non-manufacturing establishment primarily engaged in the business of selling trailers, boats or aircraft to ultimate purchasers; or

(i) Any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Commissioner shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under OAR 839-020-0030; or

ADMINISTRATIVE RULES

(j) Any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(k) Any employee with respect to the employee's employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on the farmer's own account or in conjunction with other farmers, if such employee is primarily employed during the employee's workweek in agriculture by such farmer, and if such employee is paid for the operations at a wage rate not less than that prescribed by ORS 653.025; or

(l) Any employee employed within the area of production (as defined by the Commissioner) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operation; or

(m) Any employee engaged in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State of Oregon, or any employee engaged in transportation, whether or not performed by the farmer, between the farm and any point within the State of Oregon of persons employed or to be employed in the harvesting of fruits or vegetables; or

(n) Any employee who is employed in domestic service in a household and who resides in such household; or

(o) Any employee employed by an establishment which is a motion picture theater; or

(p) Any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employee's employer in such forestry or lumbering operations does not exceed eight; or

(q) Any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and receives compensation for employment in excess of 56 hours in any workweek at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 13(b), (1), (2), (3), (5), (6), (9), (10), (11), (12), (13), (14), (16), (21), (27), (28), and (29), FLSA)

(4) The provisions of OAR 839-020-0030 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). (Reference: Sec. 13(d), FLSA)

Stat. Auth.: ORS 653.040 & ORS 653.261

Stats. Implemented: ORS 653.261

Hist.: BL 5-1989(Temp), f. 8-18-89, cert. ef. 9-1-89, (and corrected by BL 10-1989(Temp), f. 12-4-89, cert. ef. 9-1-89); BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 5-1992, f. 4-24-92, cert. ef. 4-29-92; BL 6-1992(Temp), f. & cert. ef. 6-5-92; BL 14-1992, f. & cert. ef. 12-14-92; BL 9-1996, f. & cert. ef. 10-8-96; BL 7-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: BLI 8-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 2-1-04

Notice Publication Date: 6-1-03

Rules Amended: 839-020-0150

Subject: The rule amendment repeals the current exemption from the working conditions provisions of OAR 839-020-0050 to 839-020-0065 for employees engaged in agricultural employment. Repeal of the exemption entitles agricultural employees to meal and rest periods, prohibits requiring agricultural employees to lift excessive weights, and requires agricultural employers to comply with the provisions of ORS Chapter 654 (the Oregon Safe Employment Act) and provide sanitary and safe work areas.

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

839-020-0150

Exemptions

(1) An individual employed as a resident manager of an adult foster home is not subject to the minimum wage and overtime provisions of ORS 653.010 to 653.261 so long as the resident manager is domiciled at the adult

foster home and is directly responsible for the daily care of the residents residing in the home; and

(a) The resident manager is employed to work in a licensed adult foster home as defined in ORS 443.705(4) pursuant to the Adult Foster Homes Licensing Law (ORS 443.705 to 443.825); or

(b) The resident manager is employed to work in an adult foster home which is exempt from the license, inspection and fee provisions of the Adult Foster Homes Licensing Law (ORS 443.705 to 443.825) pursuant to ORS 443.780.

(2) The provisions of ORS 653.010 to 653.261 and these rules pertaining to the payment of minimum wage and overtime pay do not apply to inmates of the Oregon Department of Corrections assigned to a work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor.

(3) The provisions of ORS 653.010 to 653.261 and these rules do not apply to persons serving as a referee or assistant referee in a youth or adult recreational soccer match. Pursuant to Chapter 765, 2001 Oregon laws, these referees and assistant referees are independent contractors.

(4) The provisions of OAR 839-020-0050 to 839-020-0065 relating to working conditions do not apply to employees employed by public employers provided that the conditions of ORS 653.261(3) are met.

Stat. Auth.: ORS 653

Stats. Implemented: ORS 653.020

Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 8-2003, f. 12-31-03, cert. ef. 2-1-04

Adm. Order No.: BLI 9-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-5-04

Notice Publication Date:

Rules Amended: 839-016-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 5, 2004.

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

839-016-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts* in Oregon dated January 5, 2004 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 5, 2004, and the effective date of the applicable special wage determination:

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

(2) Copies of *Prevailing Wage Rates on Public Works Contracts* in Oregon dated January 5, 2004, and special wage determination is available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.boli.state.or.us or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #32, Portland, Oregon 97232; (503) 731-4723

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS.279.359

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04

Construction Contractors Board

Chapter 812

Adm. Order No.: CCB 13-2003(Temp)

Filed with Sec. of State: 12-19-2003

Certified to be Effective: 1-1-04 thru 6-14-04

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Adopted: 812-001-0022

Rules Amended: 812-001-0020

Subject: OAR 812-001-0020 is amended to adopt the revised form "Notice of Compliance with Homebuyer Protection Act (HPA)". The form was revised to make it more user friendly.

OAR 812-001-0022 is adopted to set out the requirements regarding who is required to give the "Notice of Compliance with Homebuyer Protection Act (HPA)" and when the notice must be given because it is not clear from the legislation.

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

812-001-0020

Information Notice to Owners

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised October 18, 2002. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised December 9, 2003.

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act (HPA)" as revised December 16, 2003.

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

Stat. Auth.: ORS 87.093 & 701.055, 701.235

Stats. Implemented: ORS 87.093, 701.055, Ch. 778 OL 2003

Hist.: IBB 4-1981, f. 11-24-81, ef. 1-1-82; IBB 3-1982, f. 6-4-82, ef. 1-1-83; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; IBB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04

812-001-0022

Requirements for Notice of Compliance with Homebuyer Protection Act

(1) Under section 2(3), chapter 778, Oregon Laws 2003, a seller of residential property must deliver a Notice of Compliance with Homebuyer Protection Act to the purchaser of:

(a) A new single family residence, condominium or residential building; or

(b) An existing single-family residence, condominium or residential building where:

(A) The price for original construction, including but not limited to an addition to the single family residence, condominium or residential building, that is completed within three months prior to the date of the sale of the property is \$50,000 or more; or

(B) The contract price for improvements to the single-family residence, condominium or residential building that are completed within three months prior to the date of the sale of the property is \$50,000 or more.

(2) The seller must deliver the notice required under 2(3), chapter 778, Oregon Laws 2003 on or before the close of the sale of the property.

(3) The notice required under section 2(3), chapter 778, Oregon Laws 2003 shall be on the form adopted under OAR 812-001-0020.

(4) Under section 2(3), chapter 778, Oregon Laws 2003, a seller of residential property may specify on the Notice of Compliance with Homebuyer Protection Act that section 2 (2), chapter 778, Oregon Laws 2003 does not apply to the sale of the property if the seller knows that no person may enforce a valid lien against the property because the last day to perfect any lien on the property under ORS 87.035 was prior to the date of sale of the property.

Stat. Auth.: ORS 670.310, 701.235, Ch. 778, OL 2003

Stats. Implemented: ORS 87, 701, Ch. 778, OL 2003

Hist.: CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04

Adm. Order No.: CCB 14-2003(Temp)

Filed with Sec. of State: 12-24-2003

Certified to be Effective: 1-1-04 thru 6-18-04

Notice Publication Date:

Rules Amended: 812-004-0110, 812-004-0250, 812-004-0440

Subject: OAR 812-004-0110 is amended to provide the processing fee under ORS 701.147 (as amended by Chapter 294, Oregon Laws 2003) only applies to residential claims.

OAR 812-004-0250 is amended to provide for reimbursement of the claim processing fee as required by ORS 701.147.

OAR 812-004-0440 is amended to clarify when a contractor received notice of a claim for purposes of ORS 701.180 (regarding contracts with mediation or arbitration agreements), which was made necessary by the pre-claim notice provisions under ORS 701.147 as amended by the 2003 legislature.

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

812-004-0110

Claim Processing Fee; Waiver of Fee

(1) The claim processing fee authorized under ORS 701.147 is \$50 for a claim filed under ORS 701.145. There is no claim processing fee for a claim filed under ORS 701.146.

(2) The agency shall collect the processing fee under OAR 812-004-0400.

(3) A claimant may request that the agency waive the processing fee described in section (1) of this rule by submitting a properly executed Processing Fee Waiver Request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the claim processing fee if the waiver request submitted by the claimant shows that:

(a) The claimant is an individual;

(b) Claimant has no significant assets except the home that is the subject of the claim and one automobile; and

(c) Claimant's gross income does not exceed the 2003 Department of Health and Human Services Poverty Guidelines published in the **Federal Register, Vol. 68, No. 26, February 7, 2003**, pp. 6456-6458.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147, & Ch. 294, OL 2003

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04

812-004-0250

Award of Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a claim that are payable from respondent's bond required under ORS 701.085, including, but not limited to an order of the board arising from a court order, may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the claim;

(e) Service charges or fees; or

(f) Other administrative damages.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond required under ORS 701.085 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien claim may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner claim may include interest expressly allowed as damages under a contract that is the basis of the claim.

(c) An order or arbitration award awarding monetary damages may include an award of a claim processing fee paid by the claimant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court or other entity that are related to the portion of the order or award of the court or other entity that is within the jurisdiction of the board if the order or award of the court or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the claimant to initiate under ORS 701.145 because of the nature or complexity of the claim.

(3) This rule does not apply to a claim filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 813.415, 183.460 & 70.145, 701.146

ADMINISTRATIVE RULES

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04

812-004-0440

Contracts with Arbitration Agreements

(1) If a claim is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency shall take the following action:

(a) The agency shall inform the claimant in a written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the claim unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the claimant; or

(B) Evidence that the claimant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the claim.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (a) of this section from the claimant within 30 days of the date of the written notice described in subsection (a) of this section, the agency may close the claim under OAR 812-004-0260. The agency may not close the claim under this subsection if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 30-day period for providing the waiver or evidence of initiation of mediation or arbitration.

(c) The agency will request that respondent sign and submit to the agency a written waiver of mediation or arbitration under the contract. If the respondent does not waive mediation or arbitration under the contract, the agency will allow the respondent the time allowed under ORS 701.180 to commence mediation or arbitration. If the contractor fails to submit evidence to the agency that mediation or arbitration under the contract commenced within the time allowed under ORS 701.180 and if the claimant waived mediation or arbitration within the time allowed under subsection (a) of this section, the agency will continue to process the claim.

(d) If mediation or arbitration under the contract is properly commenced under this section, the agency shall suspend processing the claim until the mediation or arbitration is complete.

(2) If a claim is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the claim shall be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the claim is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the claim mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a claim under ORS 701.147 or any prior communication from the agency referencing a claim, for purposes of ORS 701.180, a respondent receives notice of a claim when the agency sends the respondent the request under section (1) of this rule for a written waiver of mediation or arbitration or evidence that mediation or arbitration has been commenced.

(4) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the claim as a contested case.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 701.145 & 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04

.....
**Department of Administrative Services,
Budget and Management Division
Chapter 122**

Adm. Order No.: BMD 8-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 12-30-03

Notice Publication Date: 12-1-03

Rules Adopted: 122-040-0040, 122-040-0050, 122-040-0060

Subject: This rule will allow the Department of Administrative Services to comply with state agency's requirements for reporting of substantive program changes as required by ORS 291.373(2).

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

122-040-0040

Definitions

(1) For purposes of this rule, unless the context requires otherwise:

(a) "State agency" has the meaning given that term in ORS 291.002;

(b) "Director" means the Director of the Department of Administrative Services; and,

(c) "Program" means an activity or a series of related activities that a state agency performs to fulfill its constitutional or statutory duties and that is identified, by name or otherwise with particularity, in: the Oregon Constitution or an Oregon law, including but not limited to a statute making appropriations to the state agency; a budget report and measure summary issued by the Legislative Assembly relating to the budget for the state agency that the Legislative Assembly most recently enacted into law or the Emergency Board most recently amended; a state agency performance measure developed under ORS 291.110, or link to an Oregon Benchmark approved under ORS 285A.168(2).

(2) For purposes of ORS 291.373, a state agency substantively changes a Program, i.e., makes a "substantive Program change," when the state agency:

(a) Establishes a new Program, unless the Legislative Assembly provided for establishment of the Program by statute or anticipated establishment of the Program in a budget report and measure summary;

(b) Eliminates an existing Program, unless the Legislative Assembly provided for elimination of the Program by statute or anticipated elimination of the Program in a budget report and measure summary;

(c) Delays by six months or longer the legislatively planned establishment or elimination of a Program;

(d) Makes changes to the operation or financing of a Program by: redesigning the Program so as to affect a class of client benefit levels or provider reimbursement levels, unless the redesign consists solely of adjustments of an ongoing nature or process that are described in written materials presented to the Legislative Assembly by the state agency during the most recent legislative session; implementing an executive order; redirecting more than 10 percent of the Program's funding to another purpose as allowed by a relevant appropriation or expenditure limitation; or, otherwise makes changes to the operation or financing of a Program that the director determines affects one or more essential aspects of that Program.

Stat. Auth.: ORS 291.373

Stats. Implemented: ORS 291.373(2)

Hist.: BMD 6-2003(Temp), f. & cert. ef. 11-10-03 thru 5-5-04; BMD 8-2003, f. & cert. ef. 12-30-03

122-040-0050

Report Filing

(1) No later than fourteen days after the conclusion of each calendar quarter, a state agency shall report on and describe to the director any substantive program changes made during that calendar quarter.

(2) No later than thirty-five days after the conclusion of the calendar quarter, the director shall deliver a report on all substantive program changes made by state agencies during the calendar quarter, or deliver a report that no substantive program changes have been made during the calendar quarter, to the President of the Senate, Speaker of the House of Representatives, and the Legislative Fiscal Officer.

(3) The director may develop reporting forms for purposes of state agency reports required under subsection (1) of this section.

(4) A state agency need not submit a report to the director if it has not made any substantive program changes during the calendar quarter.

Stat. Auth.: ORS 291.373

Stats. Implemented: ORS 291.373(2)

Hist.: BMD 6-2003(Temp), f. & cert. ef. 11-10-03 thru 5-5-04; BMD 8-2003, f. & cert. ef. 12-30-03

122-040-0060

Failure to Report Substantive Program Changes

(1) A state agency that fails to report a substantive program change in a timely manner as required under subsection (1) of 122-040-0020 above shall immediately report to the director.

(2) The report to the director shall include: description of the substantive program change; information on the timing of the substantive program change and the date that the change should have been reported to the director; and, explanation of why the substantive program change was not reported as required.

(3) The director shall submit a list identifying any substantive program changes that state agencies failed to report with the report submitted

ADMINISTRATIVE RULES

to the President of the Senate, Speaker of the House of Representatives, and the Legislative Fiscal Officer required under subsection (2) of this section. The list shall include the information submitted to the department by the state agency under subsection (2) of this section, and shall indicate whether the failure to report was identified by the state agency or discovered by another party.

Stat. Auth.: ORS 291.373
Stats. Implemented: ORS 291.373(2)
Hist.: BMD 6-2003(Temp), f. & cert. ef. 11-10-03 thru 5-5-04; BMD 8-2003, f. & cert. ef. 12-30-03

**Department of Administrative Services,
Human Resource Services Division
Chapter 105**

Adm. Order No.: HRSD 23-2003(Temp)
Filed with Sec. of State: 12-19-2003
Certified to be Effective: 12-20-03 thru 3-20-04
Notice Publication Date:
Rules Amended: 105-040-0030

Subject: 105-040-0030(l) Language was added to ensure system programming is consistent with other HRSD OAR's and State Policies as it relates to the use of salary range versus salary rate in determining when to remove an applicant's name from various applicant lists. The need to add this language immediately is to authorize and support a system change that will ensure that as agencies daily disposition applicant lists they are not incorrectly removing applicants from other recruitment lists.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

105-040-0030

Use of Applicant Lists

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

(1) It is the policy of the State of Oregon to establish and maintain lists of qualified applicants to facilitate a selection process based upon required knowledge and skills.

(a) The order in which applicant lists are to be used shall be in accordance with Administrative Rule 105-040-0020, Types and Order of Applicant Lists, or as specified in collective bargaining agreements.

(b) Lists of eligibles necessary to provide an adequate number of qualified candidates shall, except for agency layoff or agency informational lists, be established and maintained on the Division's central system.

(c) When a vacant position is to be filled, an appointing authority, when appropriate, shall request a list of qualified applicants and receive a "certificate of eligibles" prior to conducting interviews.

(d) The certificate of eligibles shall be issued in one of the following formats, whichever is applicable:

(A) All applicants listed in rank order from the highest to lowest score;

(B) All applicants who meet the minimum qualifications for the position;

(C) A limited number of applicants selected at random from a list of all applicants who meet the minimum qualifications for the position.

(e) When a certificate of eligibles is issued in rank order from the highest to lowest score, applicants for interviews shall be selected in that same order. When certificates issued contain tied scores, all applicants with that score shall be offered an interview if one applicant with that score is interviewed.

(f) When a certificate of eligibles is issued for all applicants who meet the minimum qualifications for the position or for a limited number of applicants selected at random from such a list, all applicants shall be interviewed unless a valid screening process is developed and documented to select only the most qualified candidates for interview. If not all qualified applicants are to be interviewed, the job announcement shall inform applicants of the selection process being used. If the selection process includes ranking applicants using a numerical score or any other method of ranking applicants that does not result in a score, veterans' preference points shall be added, where applicable, at the time of ranking.

(g) When a certificate of eligibles is issued for a limited number of applicants selected at random from a longer list of all qualified candidates and the agency has not met its affirmative action goals, the certificate may include the same proportion of protected class candidates as the list of all qualified candidates. An appointing authority may supplement a randomly selected certificate of eligibles in the following manner:

(A) When a random certificate is requested to fill a vacant position for which there is an existing temporary appointment, an appointing authority may interview the temporary employee, or all temporary employees in the agency or work unit, in addition to the candidates listed on the randomly selected certificate of eligibles, provided that the temporary employee is included in the list of all qualified candidates and is performing the same duties of the vacant position.

(B) A randomly selected certificate of eligibles may be supplemented with the names of all qualified candidates who are clients of the Department of Human Services or Juvenile Justice Division programs described under OAR 105-040-0060, Limited-Competitive and Non-competitive Appointments.

(h) The number of candidates on the certificate of eligibles shall be determined by the appointing authority. However, all names with the same score, where scores are used, shall be included.

(i) A related applicant list of a classification having similar knowledge and skills may be used. However, applicants must meet the minimum qualifications for the position being filled.

(j) New and existing applicant lists may be consolidated, as necessary, provided minimum qualifications and the exam requirements are the same.

(k) Except for the expiration of the term of eligibility on an applicant list, any person whose name is removed from a list shall be promptly notified by the Administrator or delegated agency appointing authority of the reason for such removal.

(l) Appointment to a classification from an applicant list will automatically inactivate the applicant from all applicant lists for classifications that:

(A) have a top step salary rate equal to or less than the appointed classification top step salary rate; and

(B) have a salary range number equal to or less than the appointed classification salary range number.

(m) The Administrator or delegated agency may remove a name from an applicant list for reasons including, but not limited to the following:

(A) Failure to respond within a reasonable time period to any inquiry to availability for appointment;

(B) Expiration of the term of eligibility on the list;

(C) Willful violation of these rules or policies, or provisions of the law;

(D) Falsifying statements on the application;

(E) Failure to pass required and job related criminal record or driving record checks;

(F) Cancellation of a list;

(G) Appointment made from a lay-off list to any classification;

(n) A disposition code shall be reported for each candidate appearing on the certificate of eligibles who was invited to interview.

(2) A certificate of eligibles is a list of candidates certified to a position, as a result of submitting of an application and meeting the minimum qualifications on the job announcement, passing the exam, where applicable, and were included in the number requested by the agency.

(3) A disposition code is a standardized code assigned by an appointing authority or designee to an applicant on a Certificate. The code identifies the action taken and if their name is inactivated or removed from the List. Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

(4) A protected class candidate is a female or person of color in one of the following groups:

(a) Asian or Pacific Islander: Persons having origins in any of the peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, The Philippine Islands and Samoa.

(b) African American (not of Hispanic origin): Persons having origins in any of the black ethnic groups.

(c) Hispanic: Persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultures, regardless of ethnicity.

(d) Native American or Alaskan Native: Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) "Affirmative action goals" means those goals established in the state's Affirmative Action Plan.

Stat. Auth.: ORS 184.340 & 240.145

Stats. Implemented: ORS 240.010 & 240.306

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-2000, f. 1-28-00 cert. ef. 2-1-00; HRSD 14-2003, f. 7-15-03, cert. ef. 7-21-03; HSRD 21-2003(Temp), f. & cert. ef. 9-23-03 thru 12-19-03; HRSD 23-2003(Temp), f. 12-19-03, cert. ef. 12-20-03 thru 3-20-04

ADMINISTRATIVE RULES

Department of Administrative Services, Office of Business Administration Chapter 121

Adm. Order No.: BAD 4-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-24-03

Notice Publication Date: 12-1-03

Rules Amended: 121-040-0010

Subject: This rule establishes a process for allocating available moneys in the Administrative Services Economic Development fund as directed by 2003 House Bill 5067.

Rules Coordinator: Mary Unger—(503) 378-2349, ext. 320

121-040-0010

Process for Allocating Available Moneys in the Administrative Services Economic Development Fund

(1) The Department of Administrative Services will distribute lottery proceeds to recipients on a quarterly basis. This allocation will be based on a plan approved by the Budget and Management Division.

(2) If, in any quarter, the moneys transferred from the State Lottery Fund to the Administrative Services Economic Development Fund are insufficient to pay for the quarterly allocations, the Department of Administrative Services shall allocate funds in the following priority order:

(a) Satisfy current debt service obligations for the Westside Light Rail (allocated in the first and fifth quarters);

(b) Satisfy all other current debt service obligations (allocated in the first and fifth quarters);

(c) Satisfy all Constitutionally mandated allocations.

(d) Satisfy all statutorily mandated allocations.

(e) Satisfy all other allocations on a proportional basis. Allocations in a particular quarter may be based on the cash flow needs of the recipients. This may require deferring allocations to a recipient in one quarter with the objective of funding the full allocation during the balance of the biennium.

Stat. Auth.: Art. XV, sec. 4(4)(d) of the Or. Const., ORS 461.500 - 461.555

Stat. Implemented: 2003 HB 5076

Hist.: BAD 1-2001, f. & cert. ef. 10-1-01; BAD 4-2003, f. 12-23-03, cert. ef. 12-24-03

Department of Agriculture Chapter 603

Adm. Order No.: DOA 42-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-23-03

Notice Publication Date: 11-1-03

Rules Amended: 603-057-0006

Rules Repealed: 603-057-0006(T)

Subject: Decreases the annual fee for registration of a pesticide product with the department from \$160 to \$120.

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

603-057-0006

Pesticide Registration Fees

The annual registration fee for each pesticide product shall be \$120.

Stat. Auth.: ORS 634

Stats. Implemented: ORS 634

Hist.: AD 855(27-67), f. 10-9-67, ef. 1-1-68; AD 1008(22-73)(Temp), f. & ef. 12-5-73; AD 1014(4-74), f. 1-18-74, ef. 2-11-74; AD 7-1977, f. & ef. 4-5-77; AD 24-1981, f. & ef. 12-1-81; AD 17, f. & cert. ef. 11-15-89; DOA 21-1999, f. 9-30-99, cert. ef. 11-1-99; DOA 26-2001, f. & cert. ef. 11-6-01; DOA 38-2003(Temp), f. 10-15-03 cert. ef. 11-23-03 thru 5-19-04; DOA 40-2003, f. & cert. ef. 10-17-03; DOA 41-2003(Temp), f. 11-14-03, cert. ef. 11-23-03 thru 5-20-04; DOA 42-2003, f. & cert. ef. 12-23-04

Adm. Order No.: DOA 1-2004

Filed with Sec. of State: 1-12-2004

Certified to be Effective: 1-12-04

Notice Publication Date: 8-1-03

Rules Adopted: 603-095-3600, 603-095-3620, 603-095-3640, 603-095-3660

Subject: The rules effectuate the implementation of the Powder Brownlee Agricultural Water Quality Management Area developed pursuant to ORS 568.900 et. seq.

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

603-095-3600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Powder/Brownlee Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933. The area plan is known as the Powder/Brownlee Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Powder/Brownlee Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Powder/Brownlee Agricultural Water Quality Management Area.

(3) Failure to comply with any provisions of the Powder/Brownlee Agricultural Water Quality Management Area Plan:

(a) does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of

OAR 603-095-0010 to 635-095-3660;

(b) is not intended by the department to be evidence of a violation of any federal, state, or local law by any person.

(4) Nothing in the Powder/Brownlee Agricultural Water Quality Management Area Plan shall be:

(a) construed as an effluent limitation or standard under the federal Water Pollution Control Act, 33 USC §§ 1251-1376;

(b) used to interpret any requirement of OAR 603-095-3600 to 635-095-3660.

Statutory Authority: ORS 561.190–561.191, ORS 568.912

Stats. Implemented: ORS 568.900–568.933

Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3620

Geographic and Programmatic Scope

(1) The Powder/Brownlee Agricultural Water Quality Management Area includes the portions of the following sub-basins that are within the boundaries of the state of Oregon: the Powder (HUC 17050203) and the Brownlee Reservoir (HUC 17050201). The physical boundaries of the Powder/Brownlee Agricultural Water Quality Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Powder/Brownlee Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Powder/Brownlee Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply and to assure that duplication of any services provided or fees assessed does not occur.

Statutory Authority: ORS 561.190–561.191, ORS 568.912

Stats. Implemented: ORS 568.900–568.933

Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3640

Prevention and Control Measures

(1) A landowner shall be responsible for only those conditions caused by activities conducted on land owned or managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) Pollution Control and Waste Management: Effective on rule adoption. No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside Conditions

(a) By January 1, 2006, activities will allow the establishment and development of riparian vegetation, consistent with site capability. Site capability will be determined by ODA in consultation with local resource management agencies.

(b) Landowners are not responsible for browsing and grazing by wildlife.

(c) The rule does not specify any activities that must cease and does not require any particular activity to take place.

ADMINISTRATIVE RULES

Statutory Authority: ORS 561.190-561.191, ORS 568.912
Stats. Implemented: ORS 568.900-568.933
Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3660

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate investigation activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3660(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3660, the department may investigate at any time any complaint if the Department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Statutory Authority: ORS 561.190-561.191, ORS 568.912
Stats. Implemented: ORS 568.900-568.933
Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

.....
**Department of Agriculture,
Oregon Albacore Commission
Chapter 972**

Adm. Order No.: AC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 972-010-0030, 972-030-0010, 972-030-0020, 972-030-0030, 972-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Shirley Velazquez—(541) 267-5810

972-010-0030

Penalties

(1) Penalty for delaying transmittal of assessment moneys is provided in ORS 576.355, which states, "In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of assessment."

(2) The commission may waive the penalty and interest described in subsection (1) of this section upon a showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, Sec. 42, ORS 576.
Stats. Implemented: 2003 OL Ch. 604, Sec. 42.
Hist.: AC 1-2004, f. 1-15-04 cert. ef. 1-16-04

972-030-0010

Number of Commissioners, Terms

The Oregon Albacore Commission will consist of seven commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: AC 1-2004, f. 1-15-04 cert. ef. 1-16-04

972-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Albacore Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of Albacore tuna;

(b) Three members will be producers;

(c) Three members will be handlers;

(d) All members who are not a handler or the public member will be producers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: AC 1-2004, f. 1-15-04 cert. ef. 1-16-04

972-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: AC 1-2004, f. 1-15-04 cert. ef. 1-16-04

972-030-0040

Chair and Other Officers

Annually, at the Budget Hearing of the Commission for the new fiscal year, the Commission will elect from its members a Chair and a Vice Chair who will serve until their successors are elected and qualified. The Chair and Vice Chair may resign as such or may be removed from that position by vote of four Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: AC 1-2004, f. 1-15-04 cert. ef. 1-16-04

.....
**Department of Agriculture,
Oregon Alfalfa Seed Commission
Chapter 624**

Adm. Order No.: OASC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 624-010-0050, 624-010-0060, 624-030-0010, 624-030-0020, 624-030-0030, 624-030-0040

Rules Amended: 624-010-0000, 624-010-0020, 624-010-0030

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner

ADMINISTRATIVE RULES

appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include a partial refund of assessment.

Rules Coordinator: Edith Kressly—(541) 881-1335

624-010-0000

Definitions

(1) "Person" means any individual, corporation, association, partnership or joint stock company.

(2) "Commission" means the Oregon Alfalfa Seed Commission.

(3) "Casual Sale" means any casual sale or sales of Alfalfa seed made by the producer direct to the consumer where the total accumulated sales during a calendar year is not more than 100 pounds.

(4) "First Purchaser" means any person who buys alfalfa seed from the producer in the first instance, or handler who receives alfalfa seed in the first instance from the producer for resale or processing.

(5) "Producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise.

(6) "Handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(7) Alfalfa Seed consists of the varieties *Medicago sativa* L., *Medicago falcata* L., and *Medicago variameia* and includes all varieties, both certified and common seed.

(8) "Net Paid for Weight" means all sales or bartered pounds paid for.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2001, f. & cert. ef. 2-15-01; OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0020

Reports and Payment of Assessment Monies

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases by or deliveries to a first purchaser or handler of alfalfa seed. Assessment reports are due in the commission office by 5:00 p.m. on the 15th day of the month, on a monthly or quarterly period, at the handler's option. If reporting on a quarterly basis, the deadlines are:

(a) January, February, March report by April 15th;

(b) April, May, June report by July 15th;

(c) July, August, September report by October 15th;

(d) October, November, December report by January 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his final purchase of alfalfa seed for the crop season, he may mark such report in large letters "Final Report For This Crop Season". No further reports are necessary by such first purchaser unless or until additional purchases are made.

(3) When a first purchaser lives or has his office in another state, or is a federal or governmental agency, the producer shall report to this Commission all sales made to such purchaser as required by section (1) of this rule and shall pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due, the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler shall attach and forward payment to the Commission for the assessment due as set forth in each such report. The forms shall be signed by the first purchaser and completely filled out, and shall include, in addition to all other required information and figures, the name and complete mailing address of each producer, the crop year, the pounds and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions of all or part of his production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report his sales of such commodity of his own production on forms provided by, and pay the assessment monies directly to the Commission, unless the first purchaser from such producer voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a producer direct to another producer.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2001, f. & cert. ef. 2-15-01; OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0030

Penalties

(1) Penalty for delaying transmittal of assessment monies. In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the Commission will pay 10 (ten) percent of the amount due and one and one-half (1 1/2%) percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: ORS 576, 2003 OL, Chapter 604

Stats. Implemented: ORS 576.305

Hist.: ASC 1-1990, f. & cert. ef. 7-11-90; OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0050

Refund of Parts of Assessment Used for Advertising and Product Promotion

(1) Any producer or first purchaser who has paid an assessment pursuant to OAR 624-010-0010 may apply to the Commission for a refund of that portion of the assessment that has been used for advertising and product promotion during the preceding fiscal year. Notwithstanding the foregoing, applications will only be accepted for refunds for assessment paid after January 16, 2004, the effective date of the administrative rule authorizing refunds. An application for refund under this rule must be submitted within 30 days after the close of the preceding fiscal year.

(2) Refund applications under this rule shall be made on forms provided by the Commission. Refund applications must include proof of payment of the assessment, together with any interest and penalties. Proof of payment may include any of the following: settlement sheets, copies of checks, credit card statements, or receipts for cash payments.

(3) Refund applications under this rule, together with proof of payment, must bear the notarized signature of the person seeking the refund, certifying the truth of the information contained in the application. If the refund is sought by a business entity (such as a corporation or partnership), the application must bear the notarized signature of a person authorized to make the application on the business entity's behalf. If the refund is sought by a person or entity for an assessment that they paid on behalf of a producer, the application shall include a signed, notarized statement from the producer assenting to the application.

(4) Refund applications under this rule that are incomplete, contain erroneous information, or are otherwise deficient will be returned to the person seeking the refund with an explanation of the deficiency. The Commission may request additional information if necessary to evaluate the refund request.

(5) The Commission will either pay refunds within 60 days of the end of the fiscal year or return the application as incomplete, inaccurate, or otherwise deficient.

(6) Any person aggrieved by a decision to deny refund, or to provide a refund in less than the amount sought, may appeal. Appeals shall be in writing, filed with the Executive Director within 30 days of the date of the decision complained of, and shall specifically state all reasons for the appeal and the relief sought.

(7) When the Commission gives notice of its annual budget hearing, it will include a specific statement of the amount proposed to be budgeted for advertising and product promotion, if any.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-010-0060

Definitions

(1) For purposes of 624-010-0050, "advertising and product promotion" means any action taken to present a favorable image of Oregon alfalfa seed to the general public or to the food and agriculture industry for the purpose of improving the competitive position of alfalfa seed and stimulating the sale of alfalfa seed.

(a) Without limiting the generality of the foregoing, "advertising and product promotion" includes:

(A) Providing information to consumers that is designed to enhance the image or sale of alfalfa seed;

(B) Consumer Education;

(C) Nutrition Education; and

(D) Providing funding to another person or entity to carry out any of the above.

(b) Advertising and product promotion does not include the act of carrying out or conducting research, as defined in subsection (5) of this rule, or the communication of the results of research finding to peers through sci-

ADMINISTRATIVE RULES

entific journals, but may include the communication of the results of research findings if the purpose of that communication is to enhance the image or sale of alfalfa seed.

(2) Consumer Education. The term "Consumer Education" means any program or action utilizing or funding public relations, advertising or other means devoted to educating the general public of alfalfa seed.

(3) First Purchaser, Handler, Purchaser. The terms "First Purchaser," "Handler," and "Purchaser" have the meanings given in Oregon Laws 2003, Chapter 604.

(4) Nutrition Education. The term "Nutrition Education" means any program or action intended to broaden the understanding of sound nutritional principles including the role of alfalfa seed in a balanced diet;

(5) Research. "Research" means any type of test, study, or analysis. Research may include research concerning how to enhance the image or sale of alfalfa seed, as well as research concerning use, production, product development, quality, nutrition, or other characteristics of alfalfa seed.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0010

Number of Commissioners, Terms

The Oregon Alfalfa Seed Commission will consist of five (5) commissioners appointed by the Director of the Oregon Department of Agriculture for a term or three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. No commissioner will serve for more than two (2) consecutive full and complete three year terms of office.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Alfalfa Seed Commission will have the following qualifications, which will continue during the term of office of the member:

(a) There will be no public member of the Oregon Alfalfa Seed Commission as long as partial refund is offered.

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for the following reasons:

(1) Two consecutive unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment.

(7) Not working for the positive economic benefit of the commodity.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

624-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission at the beginning of the new fiscal year, the Commission will elect from its members a Chair and a Vice Chair who will serve until their successors are elected and qualified.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OASC 1-2004, f. 1-15-04 cert. ef. 1-16-04

.....

Department of Agriculture, Oregon Bartlett Pear Commission Chapter 606

Adm. Order No.: OBPC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 12-1-03

Rules Adopted: 606-030-0010, 606-030-0020, 606-030-0040

Rules Amended: 606-010-0025

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, and other aspects of commodity commissioner appointment and service, including the appointment of a public member. The amended rule addresses penalties for nonpayment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42).

Rules Coordinator: Linda Bailey —(503) 652-9720

606-010-0025

Penalties

(1) Penalty for delaying transmittal of assessment moneys (ORS 576.355) "In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commission shall pay a penalty of ten (10) percent of the amount due and shall also pay one and one-half (1 1/2) percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: BP 1, f. 8-17-65, ef. 8-18-65; OBPC 1-2004, f. & cert. ef. 1-15-04

606-030-0010

Number of Commissioners, Terms

The Oregon Bartlett Pear Commission will consist of ten (10) commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OBPC 1-2004, f. & cert. ef. 1-15-04

606-030-0020

Qualifications of Commissioners

(1) For purposes of commissioner qualifications:

(a) A "producer" is a person or other legal entity growing or producing within this state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Bartlett Pear Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of Bartlett Pears;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

ADMINISTRATIVE RULES

(3) Geographic Representation — In addition to the qualifications set forth in subsection (2) of this rule, at least nine member(s) shall be from each of the following regions:

(a) Four members shall be from Hood River County (District 1) Position 1 will be a handler with term expiring 6/30/06 and every 3 years thereafter Position 2 will be a handler with term expiring 6/30/06 and every 3 years thereafter Position 3 will be a producer with term expiring 6/30/05 and every 3 years thereafter Position 4 will be a producer with term expiring 6/30/05 and every 3 years thereafter

(b) Four members shall be from Jackson County (District 2) Position 5 will be a producer with term expiring 6/30/05 and every 3 years thereafter

Position 6 will be a handler with term expiring 6/30/06 and every 3 years thereafter Position 7 will be a producer with term expiring 6/30/04 and every 3 years thereafter Position 8 will be a producer with term expiring 6/30/04 and every 3 years thereafter

(c) One member will be from the balance of the state (District 3)

Position 9 will be a producer with term expiring 6/30/04 and every 3 years thereafter
Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: OBPC 1-2004, f. & cert. ef. 1-15-04

606-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Commission will elect from its members a Chair, a Vice Chair, and a Secretary-Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair, or Secretary-Treasurer may resign as such or may be removed from that position by vote of a majority of all Commissioners. If the Chair, Vice Chair, or Secretary-Treasurer ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: OBPC 1-2004, f. & cert. ef. 1-15-04

.....
**Department of Agriculture,
Oregon Beef Council
Chapter 605**

Adm. Order No.: BC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 12-1-03

Rules Adopted: 605-030-0010, 605-030-0020, 605-030-0030, 605-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) and ORS 577 that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member.

Rules Coordinator: Dianne Byrne Johnston—(503) 274-2333

605-030-0010

Number of Commissioners, Terms

The Oregon Beef Council will consist of eight (8) commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. In the case of an appointment to fill a vacancy, the appointee will serve the unexpired part of the term of that commissioner.

Stat. Auth.: 2003 OL Ch. 604, ORS 577
Stats. Implemented: 2003 OL Ch. 604, ORS 577
Hist.: BC 1-2004, f. & cert. ef. 1-15-04

605-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "beef producer" is a person who raises, breeds, or grows cattle or calves for beef production within the state.

(b) A "dairy producer" is a person engaged in the production, on a dairy farm, of fluid milk.

(c) A "handler" is a person actively engaged in the processing, slaughtering, handling or marketing of cattle.

(2) Members of the Oregon Beef Council will have the following qualifications, which will continue during the term of office of the member:

(a) Two members of the Council will be dairy producers;

(b) Three members of the Council will be beef producers;

(c) One member of the Council will be actively engaged in the business of feeding cattle and usually operating a feedlot;

(d) One member of the Council will be a handler;

(e) one member of the Council will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of cattle or fluid milk.

(3) Each Commissioner, other than the public member, will:

(a) Be a citizen of the United States;

(b) Be a bona fide resident of Oregon;

(c) Have demonstrated through membership in organization(s) representing the production or business of the commodity, or through public service, an active interest in the development of the beef industry in Oregon;

(d) Have been, for at least five years, actively engaged in and derived a substantial portion of income from the type of production or business that the member will represent on the council.

Stat. Auth.: 2003 OL Ch. 604, ORS 577
Stats. Implemented: 2003 OL Ch. 604, ORS 577
Hist.: BC 1-2004, f. & cert. ef. 1-15-04

605-030-0030

Removal of Commissioners

(1) The Director of the Department of Agriculture may, after a public hearing and after serving a copy of the charges against a member, remove any member of the Oregon Beef Council for:

(a) Inefficiency,

(b) Neglect of duty or

(c) Misconduct in office.

(2) The Director will have the member served with notice of the charges at least 10 days before the hearing. The notice will include the time and place of the hearing.

(3) At the hearing, the member will have the opportunity to be heard in person or represented by counsel and will be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(4) In every case of removal, the Director will file with the office of the Secretary of State a complete statement of all charges, a record of the entire proceedings and the findings.

Stat. Auth.: 2003 OL Ch. 604, ORS 577
Stats. Implemented: 2003 OL Ch. 604, ORS 577
Hist.: BC 1-2004, f. & cert. ef. 1-15-04

605-030-0040

Chair and Other Officers

Annually, at the last meeting of the Council of the fiscal year, the Council will elect from its members a Chair, a Vice Chair and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair or Secretary/Treasurer may resign as such or may be removed from that position by vote of a majority of all commissioners. If the Chair, Vice Chair or Secretary/Treasurer ceases to be a commissioner, the office will be vacant and a successor will be elected at the next regular meeting of the Council. The Chair will preside over all meetings of the Council. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 577
Stats. Implemented: 2003 OL Ch. 604, ORS 577
Hist.: BC 1-2004, f. & cert. ef. 1-15-04

.....
**Department of Agriculture,
Oregon Blueberry Commission
Chapter 670**

Adm. Order No.: OBC 1-2004

Filed with Sec. of State: 1-12-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 12-1-03

Rules Adopted: 670-030-0010, 670-030-0020, 670-030-0030

Rules Amended: 670-010-0020

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission including amending their penalties to reflect the new levels outlined in SB 854.

Rules Coordinator: Lisa Ostlund—(503) 364-2944

ADMINISTRATIVE RULES

670-010-0020

Penalties

Penalty for delaying transmittal of assessment moneys ORS 576.355
"In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment. A commission may waive the penalty and interest described in subsection (1) of this section upon showing of good cause."

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OBC 1-1986, f. 5-28-86, ef. 6-1-86; OBC 1-2004, f. 1-12-04, cert. ef. 1-15-04

670-030-0010

Number of Commissioners, Terms

The Oregon Blueberry Commission will consist of nine (9) commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. No commissioner will serve for more than two full consecutive terms of office.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OBC 1-2004, f. 1-12-04, cert. ef. 1-15-04

670-030-0020

Qualifications of Commissioners

Members of the Blueberry Commission will have the following qualifications, which will continue during the term of office of the member:

(1) One (1) member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of blueberries;

(2) Six (6) of the members will be blueberry producers;

(3) Two (2) of the members will be blueberry handlers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OBC 1-2004, f. 1-12-04, cert. ef. 1-15-04

670-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(1) Two (2) unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment;

(7) Not working for the positive economic benefit of the commodity.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OBC 1-2004, f. 1-12-04, cert. ef. 1-15-04

.....

Department of Agriculture, Oregon Dairy Products Commission Chapter 617

Adm. Order No.: ODDC 1-2004

Filed with Sec. of State: 1-2-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 617-030-0010, 617-030-0020, 617-030-0030, 617-030-0040, 617-010-0090

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission, and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Sheldon Pratt—(503) 229-5033

617-010-0090

Penalties

(1) In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commission will pay a penalty of ten (10) percent of the amount due and will also pay one and one-half (1 1/2) percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.

Stats. Implemented: 2003 OL Ch. 604, ORS 576.

Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04

617-030-0010

Number of Commissioners, Terms

The Oregon Dairy Products Commission will consist of eight (8) commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three (3) years from the date of expiration of any prior term. No commissioner will serve for more than two (2) full consecutive terms of office.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04

617-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Dairy Products Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of dairy products;

(b) A majority of the members will be producers;

(c) One member will be a handler;

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, no more than three (3) members will be from any one of the districts listed in subsections (a) through (e). The districts and the number of producer members will be:

(a) Eastern Oregon: Malheur, Baker, Wallowa, Union, Grant, Harney, Deschutes, Crook, Jefferson, Hood River, Wasco, Morrow, Sherman, Gilliam and Umatilla counties — one (1) producer member.

(b) Southern Oregon: Douglas, Josephine, Jackson, Klamath, Coos, Curry and West Douglas counties — one (1) producer member.

(c) Willamette: Lane, Linn, Benton, Marion, Polk, and Yamhill counties — one (1) producer member.

(d) North Willamette: Clackamas, Columbia, Multnomah, and Washington counties — one (1) producer member.

(e) North Coast: Clatsop, Tillamook and Lincoln counties — two (2) producer members.

(4) One (1) handler member will be appointed from any district.

(5) Notwithstanding subsection (3) of this section, if a position remains vacant for more than 90 days following reasonable efforts to recruit a member from a particular district, a person may be appointed at large and may reside anywhere within the State of Oregon. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04

ADMINISTRATIVE RULES

617-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

- (1) 2 unexcused absences, or other neglect of duty in office;
- (2) Use of the commission appointment for financial gain or to avoid financial detriment;
- (3) Unauthorized use or disclosure of confidential information;
- (4) Conduct in violation of Oregon government standards and practices laws;
- (5) Misappropriation or misuse of commission funds;
- (6) Failure to satisfy one or more qualifications for appointment.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04

617-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission at the beginning of the new fiscal year, the Commission will elect from its members a Chair, Vice Chair, and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair, or Secretary/Treasurer may resign as such or may be removed from that position by vote of five Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04

.....
**Department of Agriculture,
Oregon Dungeness Crab Commission
Chapter 645**

Adm. Order No.: ODDC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 645-030-0010, 645-030-0020, 645-030-0030, 645-030-0040

Rules Amended: 645-010-0020

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Shirley Velazquez—(541) 267-5810

645-010-0020

Penalties

(1) Penalty for delaying transmittal of assessment moneys is provided in ORS 576.355, which states, "In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of assessment."

(2) The commission may waive the penalty and interest described in subsection (1) of this section upon a showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: DCC 2, f. 12-28-77, ef. 1-1-78; ODDC 1-2004, f. 1-15-04 cert. ef. 1-16-04

645-030-0010

Number of Commissioners, Terms

The Oregon Dungeness Crab Commission will consist of eight commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term

for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-15-04 cert. ef. 1-16-04

645-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Dungeness Crab Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of Dungeness crab;

(b) A majority of the members will be producers;

(c) Two members will be handlers;

(3) In addition to the qualifications set forth in subsection (2) of this rule, at least 1 member shall be a producer from each of the following major coastal ports:

- (a) Astoria
- (b) Newport
- (c) Charleston
- (d) Brookings

(4) Notwithstanding subsection (3) of this section, if a position remains vacant for more than three months following reasonable efforts to recruit a member from a particular region, a person may be appointed at large and may reside anywhere within the State of Oregon. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-15-04 cert. ef. 1-16-04

645-030-0030

Removal of Commissioners

(1) The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(a) Two unexcused absences annually, or other neglect of duty in office;

(b) Use of the commission appointment for financial gain or to avoid financial detriment;

(c) Unauthorized use or disclosure of confidential information;

(d) Conduct in violation of Oregon government standards and practices laws;

(e) Misappropriation or misuse of commission funds;

(f) Failure to satisfy one or more qualifications for appointment.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-15-04 cert. ef. 1-16-04

645-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Commission will elect from its members a Chair and a Vice Chair who will serve until their successors are elected and qualified. The Chair or Vice Chair may resign as such or may be removed from that position by vote of four Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: ODDC 1-2004, f. 1-15-04 cert. ef. 1-16-04

ADMINISTRATIVE RULES

Department of Agriculture, Oregon Fryer Commission Chapter 620

Adm. Order No.: OFC 1-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 12-1-03

Rules Adopted: 620-010-0050, 620-030-0010, 620-030-0020, 620-030-0030, 620-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission. In addition, these rules include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Nicole Negulesco—(503) 256-1151

620-010-0050

Exclusions from Assessments

Any first purchaser will deduct and withhold an assessment of the amount listed in 620-010-0020 for all of the fryers grown, produced or procured in Oregon, except that no assessment will be deducted for a producer who has grown, produced or procured less than 100,000 fryers in the current fiscal year.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OFC 1-2004, f. & cert. ef. 1-14-04

620-030-0010

Number of Commissioners, Terms

(1) The Oregon Fryer Commission will consist of nine commission members appointed by the Director of the Oregon Department of Agriculture for a term of four years or, if for a term following a prior term for that person, ending four years from the date of expiration of any prior term. Of those nine commission members, six will be producers; two will be handlers and each will represent a different business entity; and one will be a public member.

(2) Two producer members will represent each of the following districts:

(a) District 1: Clackamas, Washington, Columbia and Hood River counties

(b) District 2: Polk, Yamhill, Marion and Benton counties

(c) District 3: Linn, Lane and Douglas counties

(3) If, after a concerted effort of 60 days one the district positions cannot be filled, a member at large may be appointed for one term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OFC 1-2004, f. & cert. ef. 1-14-04

620-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in the preceding calendar year.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Fryer Commission will have the following qualifications, which will continue during the term of office of the member:

(a) one member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of fryers;

(b) A majority of the members will be independent-contractor producers;

(c) At least two members will be handlers and each will represent a different business entity;

(d) All members who are not a handler or the public member will be independent-contractor producers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OFC 1-2004, f. & cert. ef. 1-14-04

620-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(1) Two unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment;

(7) Not working for the positive economic benefit of the commodity;

(8) Inefficiency; or

(9) Misconduct.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OFC 1-2004, f. & cert. ef. 1-14-04

620-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission after the end of the fiscal year, the Commission will elect from its members a Chair, Vice Chair and Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair or Secretary/Treasurer may resign as such or may be removed from that position by vote of five Commissioners. If the Chair, Vice Chair or Secretary/Treasurer ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OFC 1-2004, f. & cert. ef. 1-14-04

.....

Department of Agriculture, Oregon Orchardgrass Seed Producers Commission Chapter 655

Adm. Order No.: OSPC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 11-1-03

Rules Adopted: 655-015-0010, 655-015-0020, 655-015-0030

Subject: The proposed new rules establish the number and terms for members of the Oregon Orchardgrass Seed Producers Commission. The rules establish qualifications to serve as a commissioner and specify the grounds for removing a commissioner.

Rules Coordinator: John H. McCulley—(503) 370-7019

655-015-0010

Number of Commissioners, Terms

The Oregon Orchardgrass Seed Producers Commission will consist of nine commissioners appointed by the Director of the Oregon Department of Agriculture for a term of four years or, if for a term following a prior term for that person, ending four years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch 604, ORS 576.

Stats. Implemented: 2003 OL Ch 604, ORS 576.

Hist.: OSPC 1-2004, f. 1-15-04 cert. ef. 1-16-04

655-015-0020

Qualifications OF Commissioners

(1) For purposes of this rule:

(a) "producer" means a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

ADMINISTRATIVE RULES

(b) "Handler" means any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the Commission assessment, if any, each of the preceding three calendar years.

(c) "Commission" means the Oregon Orchardgrass Seed Producers Commission.

(2) Members of the Commission will have the following qualifications, which will continue during the term of office of the member:

(a) No more than one member of the Commission will be a member of the public with an active interest in the positive economic development, production and marketing of the commodity, but who is not associated with the production or handling of orchardgrass seed;

(b) A majority of the Commission members will be producers;

(c) No more than one Commission member will be a handler;

(d) All Commission members who are not the handler or the public member will be producers.

(3) Commission members who are producers will be appointed based on the commission member's residence or production of orchardgrass seed in the following regions:

(a) Three producer members whose telephone area code is 503 or 971;

(b) Four producer members whose telephone area code is 541.

(4) Notwithstanding subsection (3) of this section, if a position remains vacant for more than 90 days following reasonable efforts to recruit a member from a particular region, a person may be appointed at large and may reside anywhere within the State of Oregon. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: 2003 OL Ch 604, ORS 576.

Stats. Implemented: 2003 OL Ch 604, ORS 576.

Hist.: OSPC 1-2004, f. 1-15-04 cert. ef. 1-16-04

655-015-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office and declare the position vacant for cause, including, but not limited to, the following reasons:

(1) Two unexcused absences, or other neglect of duty in office;

(2) Use of the Commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment.

Stat. Auth.: 2003 OL Ch 604, ORS 576.

Stats. Implemented: 2003 OL Ch 604, ORS 576.

Hist.: OSPC 1-2004, f. 1-15-04 cert. ef. 1-16-04

.....

Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

Adm. Order No.: OPVC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 647-015-0010, 647-015-0020, 647-015-0030

Rules Amended: 647-010-0020

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. The amendment to OAR 647-010-0020 addresses penalties for late payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42).

Rules Coordinator: John McCulley—(503) 370-7019

647-010-0020

Penalties

Penalty for delaying transmittal of assessment moneys (ORS 576.355) "In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of 10 percent of the amount due and shall also pay one

and one-half percent interest per month on the unpaid balance of the assessment."

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: PVC 2-1985 f. 7-17-85, ef. 7-22-85; OPVC 1-2004, f. 1-15-04 cert. ef. 1-16-04

647-015-0010

Number of Commissioners, Terms

The Oregon Processed Vegetable Commission will consist of 11 commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. A commissioner shall serve no more than two consecutive terms.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OPVC 1-2004, f. 1-15-04 cert. ef. 1-16-04

647-015-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) "Producer" means a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) "Handler" means any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the Commission assessment, if any, each of the preceding three calendar years.

(c) "Commission" means the Oregon Processed Vegetable Commission.

(2) Members of the Commission will have the following qualifications, which will continue during the term of office of the member:

(a) No more than one member of the Commission will be a member of the public with an active interest in the positive economic development, production and marketing of the commodity, but who is not associated with the production or handling of the six processed vegetables subject to the Commission assessment;

(b) A majority of the Commission members will be producers;

(c) No more than three Commission members will be a handler;

(d) All Commission members who are not a handler or the public member will be producers.

(3) Commission members who are producers will be appointed based on the commodity or commodities they produce with an effort made to have at least one commissioner represent each commodity that is subject to the commission assessment.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OPVC 1-2004, f. 1-15-04 cert. ef. 1-16-04

647-015-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office and declare the position vacant for cause, including, but not limited to, the following reasons:

(1) Two unexcused absences, or other neglect of duty in office;

(2) Use of the Commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OPVC 1-2004, f. 1-15-04 cert. ef. 1-16-04

.....

Department of Agriculture, Oregon Raspberry and Blackberry Commission Chapter 611

Adm. Order No.: ORBC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective:

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 611-030-0010, 611-030-0020, 611-030-0030, 611-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Rachel Denué—(503) 758-4043

611-030-0010

Number of Commissioners and Terms

The Oregon Raspberry & Blackberry Commission will consist of nine commissioners appointed by the Director of the Oregon Department of Agriculture for a term or three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. No commissioner will serve for more than two consecutive full terms of office.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.
Stats. Implemented: 2003 OL Ch. 604, ORS 576.
Hist.: ORBC 1-2004, f. & cert. ef. 1-15-04

611-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Raspberry & Blackberry Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of caneberries;

(b) A majority of the members will be producers;

(c) Two members will be handlers;

(d) All members who are not a handlers or the public member will be producers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.
Stats. Implemented: 2003 OL Ch. 604, ORS 576.
Hist.: ORBC 1-2004, f. & cert. ef. 1-15-04

611-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(1) Two consecutive unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment;

(7) Not working for the positive economic benefit of the commodity;

(8) Inefficiency; or

(9) Misconduct.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.
Stats. Implemented: 2003 OL Ch. 604, ORS 576.
Hist.: ORBC 1-2004, f. & cert. ef. 1-15-04

611-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission at the end of the fiscal year, the Oregon Raspberry & Blackberry Commission will elect from its members a Chair and a Vice Chair who will serve until their successors are elected and qualified. The Chair or Vice Chair may resign as such or may be removed from that position by vote of five or majority of the Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be elected at the next regular meeting of the Commission.

The Chair will preside over all meetings, call special meetings, and generally supervise the business affairs of the commodity commission committees.

The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant. Under normal circumstances, the Vice Chair assists in the completion of the duties of the Chair.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.
Stats. Implemented: 2003 OL Ch. 604, ORS 576.
Hist.: ORBC 1-2004, f. & cert. ef. 1-15-04

Department of Agriculture, Oregon Salmon Commission Chapter 646

Adm. Order No.: OSC 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 11-1-03

Rules Adopted: 646-010-0030, 646-030-0010, 646-030-0020, 646-030-0030, 646-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Nancy Fitzpatrick—(541) 994-2647

646-010-0030

Exclusions from Assessments

EXEMPTION BASED ON DONATION TO NON-PROFIT. Any first purchaser will deduct and withhold an assessment of the following amount for all of the salmon produced or procured in Oregon, except that no assessment will be deducted for salmon donated to a bona-fide non-profit organization providing dated proof of donation including quantity donated.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04

646-030-0010

Number of Commissioners, Terms

The Oregon Salmon Commission will consist of nine commissioners appointed by the Director of the Oregon Department of Agriculture for a term or four years or, if for a term following a prior term for that person, ending four years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04

646-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

ADMINISTRATIVE RULES

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Salmon Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of salmon;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, at least three member(s) shall be from each of the following regions:

(a) Northern Oregon border to North of Cascade Head

(b) Cascade Head to south of Florence

(c) South of Florence to southern Oregon border

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04

646-030-0030

Removal of Commissioners

(1) The Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause, including the following reason: Two unexcused absences, or other neglect of duty in office;

(2) The Commission may make a recommendation to the Director of the Department of Agriculture, or the Director may request a recommendation from the Commission on the removal of any commissioner.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04

646-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Commission will elect from its members a Chair, a Vice Chair, and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair, or Secretary/Treasurer may resign as such or may be removed from that position by vote of four Commissioners. If the Chair, Vice Chair, or Secretary/Treasurer ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair or Secretary/Treasurer will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04

Department of Agriculture, Oregon Sheep Commission Chapter 644

Adm. Order No.: SHEEP 1-2004

Filed with Sec. of State: 1-8-2004

Certified to be Effective: 1-8-04

Notice Publication Date: 12-1-03

Rules Adopted: 644-030-0010, 644-030-0020, 644-030-0030, 644-030-0040

Rules Amended: 644-010-0005, 644-010-0010, 644-010-0015, 644-010-0020, 644-010-0025

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules also implement the penalty provisions for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42) and clarify the definition for "casual sales" based on commodity quantities, 2003 Oregon Laws Chapter 604 (section 39).

Rules Coordinator: Richard Kosesan—(503) 370-7024

644-010-0005

Definitions

The following definitions will apply to division 10 and division 30 Administrative Rules of the Oregon Sheep Commission.

(1) "Person" means any individual, corporation, association, partnership, or joint stock company.

(2) "Commission" means the Oregon Sheep Commission.

(3) "Casual Sale" means any sale of wool made by the producer direct to the consumer in a quantity less than 200 pounds.

(4) "First Purchaser" means any person who buys wool from the producer in the first instance, or handler who receives the wool in the first instance from the producer for resale or processing.

(5) "Producer" means any person who raises, breeds, grows, or feeds sheep and sells the wool derived therefrom through commercial channels, and includes a person as defined in OAR 644-010-0005(1).

(6) "Handler" means any producer, processor, distributor, or other person engaged in handling or marketing of or dealing in wool, whether as owner, agent, employee, broker, or otherwise.

(7) "Wool" means the shorn or pulled fleece or fiber of sheep, in the grease basis, in the natural state before cleaning or scouring. Shorn wool is also deemed to include Murrain and other wool removed from dead sheep and other wool such as black wool, tags, and crutchings.

Stat. Auth.: ORS 577

Stats. Implemented: ORS 577

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04

644-010-0010

Assessments

(1) Any first purchaser shall deduct and withhold an assessment of one and one half cent (\$.015) per pound from the price paid to the producer thereof, after January 1, 1986, for all wool produced in Oregon.

(2) All casual sales of wool made by the producer direct to the consumer and in an amount less than 200 pounds in any calendar year shall be exempt from the assessment.

(3) Any person (including producers eligible for exemption from assessment as casual sales) may donate to the Commission. Such authorization may be made by so indicating and signing such donation on the payment slips prepared by the first handler (who will include such donations in the quarterly report).

Stat. Auth.: ORS 576 & 577

Stats. Implemented: ORS 577

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SC 1-1985, f. & ef. 11-20-85; SHEEP 1-2004, f. & cert. ef. 1-8-04

644-010-0015

Reports and Payment of Assessment Moneys

(1) First purchasers and handlers must submit completed and signed assessment reports on Commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of wool. Quarterly assessment reports are due in the commission office postmarked on or before the 30th day of the reporting month specified below. Quarterly assessments shall be reported as follows.

(a) January, February, March assessments report must be postmarked on or before April 30th;

(b) April, May, June assessments report must be postmarked on or before July 30th;

(c) July, August, September assessments report must be postmarked on or before October 30th;

(d) October, November, December assessments report must be postmarked on or before January 30th.

(2) If the first purchaser lives or has his or her principal office in another state, the producer shall make the reports and pay the assessments to the Commission as required under this section unless the first purchaser agrees in writing with the producer to voluntarily make such reports and pay such assessments.

(3) At the time that reports are due the Commission from the first purchaser as required in section (1) of this rule, the first purchaser shall attach and forward payment to the Commission for the assessment due as set forth in each such report. Reports shall be on forms provided by the Commission.

(4) Any producer who performs the handling or processing functions on all or part of his or her production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report sales of such commodity of this or her own production unless the first purchaser from such producer voluntarily makes proper deduction and remits the proceeds to the Commission.

Stat. Auth.: ORS 577

Stats. Implemented: ORS 577

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2003, f. & cert. ef. 1-6-03; SHEEP 1-2004, f. & cert. ef. 1-8-04

ADMINISTRATIVE RULES

644-010-0020

Penalties

A first purchaser or handler who delays transmittal of funds to the Commission beyond the time specified in OAR 644-010-0015 shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment. By majority vote, the Commission may waive penalties for good cause.

Stat. Auth.: ORS 577
Stats. Implemented: ORS 577
Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04

644-010-0025

Effective Dates of Assessment

The assessment to be withheld and paid by a first purchaser or handler, as required by OAR 644-010-0010(1), or the reports required under OAR 644-010-0015, applies to and covers any purchases by him or delivery on or after January 1, 1978, of wool produced in Oregon.

Stat. Auth.: ORS 577
Stats. Implemented: ORS 577
Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04

644-030-0010

Number of Commissioners, Terms

The Oregon Sheep Commission will consist of eight members appointed by the Director of the Oregon Department of Agriculture for a term of four years or, if for a term following a prior term for that person, ending four years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SHEEP 1-2004, f. & cert. ef. 1-8-04

644-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A producer member of the Commission must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A handler member of the Commission must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the Commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of wool;

(b) A majority of the members will be producers;

(c) At least two members will be handlers;

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, at least one member shall be from each of the major sheep-producing areas of the state:

(a) The area comprised of the Counties of Klamath, Lake, Harney and Malheur;

(b) The area comprised of the Counties of Grant, Baker, Gilliam, Morrow, Umatilla, Union and Wallowa;

(c) The area comprised of the Counties of Hood River, Sherman, Jefferson, Wheeler, Crook, Deschutes and Wasco;

(d) The area comprised of the Counties of Lane, Douglas, Coos, Curry, Josephine and Jackson;

(e) The area comprised of the Counties of Clatsop, Columbia, Washington, Tillamook, Clackamas, Marion, Polk, Yamhill, Linn, Benton, Lincoln and Multnomah.

(4) Notwithstanding subsection (3) of this section, if following reasonable efforts to recruit a member from a particular region, no qualified producer can be identified within a particular region, a producer may be appointed at large. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SHEEP 1-2004, f. & cert. ef. 1-8-04

644-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SHEEP 1-2004, f. & cert. ef. 1-8-04

644-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before January 1, the Commission will elect from its members a Chair, a Vice Chair and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair and Secretary/Treasurer may resign as such or may be removed from that position by vote of five Commissioners. If the Chair, a Vice Chair and a Secretary/Treasurer cease to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SHEEP 1-2004, f. & cert. ef. 1-8-04

.....
**Department of Agriculture,
Oregon Strawberry Commission
Chapter 668**

Adm. Order No.: SBY 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Adopted: 668-030-0010, 668-030-0020, 668-030-0030, 668-030-0040

Rules Amended: 668-010-0010

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Rachel Denué—(541)758-4043

668-010-0010

Assessments

(1) As authorized or required by ORS 576.325 and 576.335, any person who is a first purchaser (or otherwise is required to pay an assessment to the Oregon Strawberry Commission) for all purchases made on or after May 7, 1997, shall deduct and withhold an assessment of 1 percent of the gross value of the raw product before any deductions from the price paid to the producer thereof, after May 7, 1997 for all strawberries grown in Oregon. (See definition of "First Purchaser") Grower-purchasers will use an estimated average of the state price, which will be set by the Commission prior to September 1st each year.

(2) All casual sales of Strawberries shall be exempt from the assessment.

(3) An organic producer will be exempt from assessment if the producer presents the following information to the commission by September 15th of each year:

(a) Either:

(A) A current certificate from a certifying agent under the Organic Foods Production Act, 7 U.S.C. § 6501-6522 and its implementing regulations; or

(B) A statement of exemption from certification under the Organic Foods Production Act, 7 U.S.C. § 6501-6522 and its implementing regulations; and

(b) A production report signed by the producer containing the producer's name, mailing address, species of berries, and pounds and price for each species.

Stat. Auth.: ORS 576.305
Stats. Implemented: ORS 576.325 & ORS 576.335
Hist.: SBY 1, f. 5-31-67; SBY 4(Temp), f. & ef. 6-5-74 - 10-2-74; SBY 5, f. 12-24-74, ef. 1-25-75; SBY 1-1978, f. 5-18-78, ef. 6-1-78; SBY 1-1986, f. & ef. 6-3-86; SBY 2-1986, f. & ef. 8-12-86; SBY 1-1992, f. & cert. ef. 5-15-92; SBY 1-1997, f. & cert. ef. 5-15-97; SBY 1-2001, f. & cert. ef. 2-20-01; SBY 1-2004, f. & cert. ef. 1-15-04

ADMINISTRATIVE RULES

668-030-0010

Number of Commissioners and Terms

The Oregon Strawberry Commission will consist of seven commissioners appointed by the Director of the Oregon Department of Agriculture for a term or three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. No commissioner will serve for more than two consecutive full terms of office.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SBY 1-2004, f. & cert. ef. 1-15-04

668-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Oregon Strawberry Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of strawberries;

(b) A majority of the members will be producers;

(c) Two members will be handlers;

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, members should be representative of all growing areas.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SBY 1-2004, f. & cert. ef. 1-15-04

668-030-0030

Removal of Commissioners

The Commission may make a recommendation to the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(1) Two consecutive unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment;

(7) Not working for the positive economic benefit of the commodity;

(8) Inefficiency; or

(9) Misconduct.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SBY 1-2004, f. & cert. ef. 1-15-04

668-030-0040

Chair and Other Officers

(1) Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Oregon Strawberry Commission will elect from its members a Chair, a Vice Chair and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair or Vice Chair may resign as such or may be removed from that position by vote of four Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be elected at the next regular meeting of the Commission. The Chair will preside over all meetings, call special meetings, and generally supervise the business affairs of the commodity commission committees. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant. Under normal circumstances, the Vice Chair assists in the completion of the duties of the Chair. The Secretary/Treasurer of the commission acts as custodian of all the monies, property, securities,

fidelity bonds, and the books, records, and accounts maintained by the commodity commission. This officer is also responsible for promptly depositing all monies and securities of the commission into the appropriate banking institutions. These duties may be delegated to the administrator. In the absence of the Chair or Vice Chair, the Secretary/Treasurer may perform his or her duties.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: SBY 1-2004, f. & cert. ef. 1-15-04

Department of Agriculture, Oregon Sweet Cherry Commission Chapter 669

Adm. Order No.: OSCC 1-2004

Filed with Sec. of State: 1-13-2004

Certified to be Effective: 1-13-04

Notice Publication Date: 12-1-03

Rules Adopted: 669-010-0050, 669-030-0010, 669-030-0020, 669-030-0030, 669-030-0040

Rules Amended: 669-010-0015, 669-010-0020, 669-010-0025, 669-010-0030, 669-010-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules address other organizational aspects of the commission and establish a process to allow for annual review of assessment rates. In addition, these rules allow for the forgiveness of penalty charges by majority vote of the Commission after reviewing the explanation of why the payment was late. 2003 OR Laws Chapter 604 (section 42).

Rules Coordinator: Dana Branson—(541) 386-5761

669-010-0015

Definitions

(1) "Person" means any individual, corporation, association, partnership, or joint stock company.

(2) "Commission" means the Oregon Sweet Cherry Commission.

(3) "Casual Sale" means any sale of Oregon-produced sweet cherries made by the producer direct to any consumer(s), or any sales of fresh cherries, made direct to any retailer(s) in any one season, for an accumulated total of 2000 pounds or less during any one fiscal year.

(4) "First Purchaser" means any person who buys sweet cherries from the producer in the first instance, or handler who receives the cherries in the first instance from the producer for resale or processing.

(5) "Producer" means a person or other legal entity producing sweet cherries in Oregon for market, whether as a land-owner, landlord, tenant, sharecropper, or otherwise.

(6) "Handler" means any producer, processor, distributor, or other person engaged in handling or marketing of or dealing in sweet cherries, whether as owner, agent, employee, broker, or otherwise.

(7) Sweet cherries consist of the species Prunes Avium Linn and includes, but is not limited to, such varieties as Royal Annes, Corum, Sam, Black Republican, Van, Bing, Hoskins, Rainier, and Lambert. All sweet cherries grown in Oregon and sold commercially for whatever purpose (either for fresh market or processing) are to be included.

(8) "Net Paid for Weight" means the actual weight of all sweet cherries sold, less culls.

(9) "Cash Buyer" means any first purchaser who fully pays for any purchase within 30 days.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; RSC 1-1985, f. & ef. 9-17-85; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSCC 1-2004, f. & cert. ef. 1-13-04

669-010-0020

Assessments

(1) Each year during its February meeting, the Commission will review and may revise assessment rates on an annual basis, not to exceed four percent (4%) based on the average unit price for each market category, received by the producer on the farm, after harvest, for sweet cherries sold in commercial channels. The average unit price will be based on the average price for each market category for three (3) crop years immediately preceding.

ADMINISTRATIVE RULES

(2) The Commission will notify producers of the date, time and location of the meeting where assessments will be reviewed and may be revised. The agenda will note whether an increase is proposed.

(3) The Commission will set assessments for the following market categories:

- (a) Fresh market,
- (b) Brined,
- (c) Canned,
- (d) Frozen.

(4) The first purchaser will deduct and withhold for assessments as set annually by the Commission for the above market categories for all sweet cherries grown in Oregon. For the 2004 crop year the assessments are:

- (a) Fresh market — \$25 per ton;
- (b) Canned — \$10.25 per ton;
- (c) Frozen — \$9.25 per ton;
- (d) Brined — \$10.25 per ton.

(5) In subsequent years the assessments rates may be revised by the Commission in February. The Commission will notify the first purchasers annually of the assessment rates. The notice will be provided by March 31st of the crop year.

(6) All casual sales of sweet cherries will be exempt from the assessment. (See definition of "Casual Sales".)

Stat. Auth.: ORS 576.044(5), ORS 576.325(1)(a)(b) & 2003 OL Ch. 604.

Stats. Implemented: ORS 576.325

Hist.: RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; RSC 7(Temp), f. & ef. 7-1-75; RSC 8, f. 8-13-75, ef. 9-11-75; RSC 9, f. & ef. 11-21-75; RSC 2-1980, f. 6-6-80, ef. 6-15-80; RSC 2-1987, f. & ef. 6-8-87; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-1992, f. & cert. ef. 1-3-92; OSC 1-1994, f. & cert. ef. 6-15-94; OSC 2-1994, f. & cert. ef. 11-22-94; OSC 1-1998, f. 7-2-98, cert. ef. 7-2-98; OSC 1-2004, f. & cert. ef. 1-13-04

669-010-0025

Reports and Payment of Assessment Moneys

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases or deliveries to a first purchaser or handler of sweet cherries (net paid weight). The assessments will be reported as follows:

(a) Cherries destined for fresh market that were purchased or delivered to the first purchaser before August 1st, the assessment report is due in the commission office postmarked on or before September 1st. Cherries destined for fresh market that were purchased or delivered after August 1st, the assessment report is due in the commission office postmarked on or before October 1st;

(b) Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser before December 1st, the assessment report is due in the commission office postmarked on or before December 15th. Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser after December 1st, the assessment report is due in the commission office postmarked on or before May 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his or her final purchase of sweet cherries for the crop season, he or she may mark such report in large letters "FINAL REPORT FOR THIS CROP SEASON". No further reports are necessary by such first purchaser unless or until additional purchases are made.

(3) When a first purchaser lives or has his or her office in another state, or is a federal or governmental agency, the producer will report to this Commission all sales made to such purchaser as required by section (1) of this rule and will pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler will attach or forward payment to the Commission for the assessment due as set forth in each such report. The forms will be signed by the first purchaser or first handler and completely filled out, and will include, in addition to all other required information and figures, the name and complete mailing address of each producer, the crop year, the tonnage and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions on all or part of his or her production of the commodity, which normally would be performed by another person as the first purchaser thereof, will report his or her sales of such commodity of his or her own production on forms provided by, and pay the assessment moneys directly to, the Commission, unless the first purchaser from such producer voluntarily makes the proper deduction and remits the proceeds to the Commission. (Examples would be the sale by a producer direct to a peddler, to a retail store, etc.).

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; RSC 1-1985, f. & ef. 9-17-85; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-2001, f. & cert. ef. 2-16-01; OSC 1-2004, f. & cert. ef. 1-13-04

669-010-0030

Penalties

Penalty for delaying transmittal of assessment moneys (ORS 576.355), "In addition to the penalties prescribed in ORS 576.99(1), any person who delays transmittal of funds beyond the time set by a Commission shall pay a penalty of ten percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment. If seeking a waiver of the penalties, a written explanation of the circumstances that caused the payment delay must be submitted to the Commission office for review. Penalties may be waived by a majority vote of the Commission.

Stat. Auth.: ORS 576 & 2003 OL Ch. 604

Stats. Implemented: ORS 576 & 2003 OL Ch. 604

Hist.: RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-2004, f. & cert. ef. 1-13-04

669-010-0040

Effective Dates of Assessment

The assessment to be withheld and paid by a first purchaser or handler, as required by ORS Chapter 576 and OAR 669-010-0020(4) of the reports required under OAR 669-010-0025, applies to and covers any purchase by him or her or delivery on or after June 1, 1989, of any sweet cherries grown in Oregon.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: OSC 1-1989, f. 5-24-89 & cert. ef. 6-1-89; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-2004, f. & cert. ef. 1-13-04

669-010-0050

Exemption Based on Type of Commodity Sale

No assessment will be deducted for any sale or sales of sweet cherries made by the producer direct to any consumer(s) and/or retailer(s) where the total accumulated sales during a fiscal year is not more than 2000 pounds. (See casual sales as defined in 669-010-0015.)

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSC 1-2004, f. & cert. ef. 1-13-04

669-030-0010

Number of Commissioners, Terms

The Oregon Sweet Cherry Commission will consist of 12 commissioners appointed by the Director of the Oregon Department of Agriculture for a term three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term. No commissioner will serve more than two full consecutive terms of office. That person may serve again following a minimum of one year off the Commission.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSC 1-2004, f. & cert. ef. 1-13-04

669-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, sharecropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Sweet Cherry Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of sweet cherries;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

ADMINISTRATIVE RULES

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, the number of commissioners from each of the following regions will be:

(a) Three (3) producers from Western Oregon (all areas west of the Cascade Mountains),

(b) Five (5) producers from the Columbia River area (Wasco and Hood River Counties),

(c) One (1) producer from Eastern Oregon, and

(d) Two (2) handlers (one brine processor and one fresh handler).

(4) Notwithstanding subsection (3) of this section, if following reasonable efforts to recruit a member from a particular region, a position remains vacant for more than one meeting, or two months, a person may be appointed at-large and may reside anywhere within the State of Oregon. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSCC 1-2004, f. & cert. ef. 1-13-04

669-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSCC 1-2004, f. & cert. ef. 1-13-04

669-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Commission will elect from its members a Chair, a Vice Chair and a Secretary/ Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair or Secretary/Treasurer may resign as such or may be removed from that position by vote of a majority of Commissioners. If the Chair, Vice Chair or Secretary/Treasurer ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant. The Secretary/Treasurer will be available to approve and co-sign payments as needed.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: OSCC 1-2004, f. & cert. ef. 1-13-04

.....

Department of Agriculture, Western Oregon Onion Commission Chapter 608

Adm. Order No.: WOC 1-2004

Filed with Sec. of State: 1-2-2004

Certified to be Effective: 1-2-04

Notice Publication Date: 11-1-03

Rules Adopted: 608-030-0010, 608-030-0020, 608-030-0030, 608-030-0040

Rules Amended: 608-010-0015, 608-010-0020

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and penalties for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42).

Rules Coordinator: Bruce Andrews—(503) 742-0160

608-010-0015

Reports and Payment of Assessment Moneys

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases by or deliveries to a first purchaser or handler of Onions. Assessment reports must be postmarked on or before the 15th day for the reporting month specified below. Assessments shall be reported as follows:

(a) January, February, March, April assessments postmarked by May 15th;

(b) May, June, July, August assessments postmarked by September 15th;

(c) September, October, November, December assessments postmarked by January 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his or her final purchase of Onions for the crop season, [he shall mark such] the report will be marked in large letters "FINAL REPORT FOR THIS CROP SEASON". No further reports are necessary by such first purchaser unless or until additional purchases are made. (See section (4) of this rule for completing the final report forms.)

(3) When a first purchaser lives or has his or her office in another state, or is a federal or governmental agency, the producer [shall] will report to this Commission all sales made to such purchaser as required by section (1) of this rule and [shall] will pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due the Commission from the first purchaser as required in section (1) of this rule, the first purchaser will attach or forward payment to the Commission for the assessment due as set forth in each such report. The report forms will be signed by the first purchaser and completely filled out, and will include, in addition to all other required information and figures, the name and mailing address of each producer, the crop year, the tonnage, and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions on all or part of his or her production of the commodity, which normally would be performed by another person as the first purchaser thereof, shall report his or her sales of such commodity of his or her own production on forms provided by, and pay the assessment moneys directly to the Commission, unless the first purchaser from such producer voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a producer direct to a peddler, to a retail store, etc.)

Stat. Auth.: ORS 576.044 - ORS 576.595

Stats. Implemented: ORS 576.044 - ORS 576.595

Hist.: DO 1(Temp), f. 7-1-76, ef. 7-15-76; DO 4, f. & ef. 11-3-76; DO 1-1985, f. & ef. 9-17-85; WOC 2-1988(Temp), f. & cert. ef. 10-6-88; WOC 1-1994, f. 7-29-94, cert. ef. 8-1-94; WOC 1-2000, f. & cert. ef. 12-13-00; WOC 1-2004, f. & cert. ef. 1-2-04

608-010-0020

Penalties

(1) Penalty for delaying transmittal of assessment moneys (ORS 576.355) "In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commission shall pay a penalty of ten (10) percent of the amount due and shall also pay one and one-half (1 1/2) percent interest per month on the unpaid balance of the assessment."

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: DO 1(Temp), f. 7-1-76, ef. 7-15-76; DO 4, f. & ef. 11-3-76; WOC 2-1988(Temp), f. & cert. ef. 10-6-88; WOC 1-2004, f. & cert. ef. 1-2-04

608-030-0010

Number of Commissioners, Terms

The Western Oregon Onion Commission will consist of six commissioners appointed by the Director of the Oregon Department of Agriculture for a term or four years or, if for a term following a prior term for that person, ending four years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: WOC 1-2004, f. & cert. ef. 1-2-04

608-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have col-

ADMINISTRATIVE RULES

lected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Western Oregon Onion Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of Onions;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

(3) In addition to the qualifications set forth in subsection (2) of this rule, member(s) shall be from each of the following regions: Willamette valley counties west of the Cascade crest.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: WOC 1-2004, f. & cert. ef. 1-2-04

608-030-0030

Removal of Commissioners

The Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: WOC 1-2004, f. & cert. ef. 1-2-04

608-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission at the beginning of the new fiscal year, the Commission will elect from its members a Chair, a Vice Chair and a Secretary/Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair or Secretary/Treasurer may resign as such or may be removed from that position by vote of a majority of all Commissioners. If the Chair, Vice Chair or Secretary/Treasurer ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant. The Chair as well as other officers may be removed by an affirmative vote for removal by four members of the commission.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: WOC 1-2004, f. & cert. ef. 1-2-04

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

Adm. Order No.: BCD 20-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 918-050-0010, 918-050-0020

Subject: Housekeeping changes needed as 2003 Senate Bill 906 eliminated the Tri-County Building Industry Service Board.

Rules Coordinator: Louann P. Rahmig—(503) 373-7438

918-050-0010

Definitions

The following definitions are adopted for OAR chapter 918, division 050:

(1) "Tri-County" refers to the geographical area that includes Clackamas, Multnomah and Washington counties.

(2) "Tri-County Service Center" (hereinafter "Service Center") means the Department of Consumer and Business Services Building Codes Division regional office created by ORS 455.842.

Stat. Auth.: ORS 455.842, 455.844 & 455.846

Stats. Implemented: ORS 455.842, 455.844 & 455.846

Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 20-2003, f. 12-31-03, cert. ef. 1-1-04

918-050-0020

Standard Application Forms

(1) All jurisdictions within the Tri-County area shall use standard permit application and intake checklist forms as approved by the division.

(2) Amendments to the approved standard application and intake checklist forms shall be considered for adoption by the division using one of the two following timelines:

(a) A form change proposal may be filed with the service center for consideration no later than February 1 or August 1. The proposal shall include the existing unamended form(s), form(s) with the appropriate changes and a brief explanation of the need for the change.

(b) The service center shall submit the proposed amendments received under subsection (a) of this section to the division for its consideration and formal action following receipt of the complete proposal.

(c) If the formal action under subsection (b) of this section requires changes to the standard application and checklist forms, the service center shall notify all affected municipalities and interested parties of the division's action including copies of the appropriate amended form(s). Any form changes shall be effective in all Tri-County jurisdictions on July 1 or January 1 following division approval.

Stat. Auth.: ORS 455.844 & 455.846

Stats. Implemented: ORS 455.844 & 455.846

Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 20-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: BCD 21-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 918-780-0035

Rules Repealed: 918-780-0120

Subject: Adopts criteria for allowing exemption from permits and inspections for minor plumbing repairs. Expands exemption to commercial and industrial properties.

Rules Coordinator: Louann P. Rahmig—(503) 373-7438

918-780-0035

Exempt Ordinary Minor Repairs

(1) Scope of exemption. This exemption is available only when the work is done by a licensed plumber in the employ of a registered plumbing contractor.

(2) The following are designated as "ordinary minor repairs" exempt from permits and inspections:

(a) Repair, replacement or maintenance of existing and accessible parts, appliances or appurtenances;

(b) Replacement of three or fewer fixtures per structure for a period of 180 days, including related existing and accessible water supply and drain attachments; or

(c) Emergency repair or replacement of freeze-damaged or leaking exposed or concealed piping not exceeding five feet of new piping per structure for a period of 180 days.

(3) "Ordinary plumbing repairs" do not include:

(a) Replacement of water heaters;

(b) Medical gas piping systems as defined in ORS 447.010(f); or

(c) Solar heating and cooling systems as defined in ORS 447.010(g).

(4) The plumbing product certification, **Oregon Plumbing Specialty Code and One- and Two-Family Dwelling Specialty Code** plumbing installation requirements remain applicable.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 447.072 & 447.076

Stats. Implemented: ORS 447.072 & 447.076

Hist.: BCD 21-2003, f. 12-31-03, cert. ef. 1-1-04

Department of Consumer and Business Services, Director's Office Chapter 440

Adm. Order No.: DO 4-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 440-020-0010, 440-020-0015, 440-055-0008, 440-100-0010

Rules Repealed: 440-055-0000, 440-055-0005

Subject: **OAR 440-020-0010, 440-020-0015 Licensing:** ORS 25.785 requires the Department of Consumer and Business Services to record an applicant's social security number in order to issue or renew a license, permit or registration. These rules establish requirements and procedures for requiring an applicant to provide a social security number as well as establishing requirements for applicants

ADMINISTRATIVE RULES

who have not been issued a social security number by the United States Social Security Administration.

OAR 440-055-0008 Confidentiality and Inadmissibility of Mediation Communications: ORS 36.220 through 36.238 authorize state agencies to make mediation communications confidential. These statutes also allow agencies to limit the discovery and admissibility of mediation communications in subsequent proceedings. The Department of Justice has developed model rules regarding confidentiality and inadmissibility of mediation communications. The Department of Consumer and Business Services is proposing to adopt the model rule of the Department of Justice.

OAR 440-100-0010 Appeal Period after Garnishment Challenge Denied: Establishes a deadline to request a contested case hearing when the Department of Consumer and Business Services denies a challenge to a garnishment proceeding for collection of an unpaid debt.

OAR 440-055-0000 Authority for Rules and 440-055-0005 Applicability of Rule: 440-055-0000 and 440-055-0005 are being repealed because they are unnecessary. The authority for and applicability of rules in OAR Chapter 440 Division 055 are included in OAR 440-055-0008 and 440-055-0010.

Rules Coordinator: Myrna Curzon—(503) 947-7866

440-020-0010

Purpose of the Rules

The Department of Consumer and Business Services is required by ORS 25.785 to record an applicant's social security number in order to issue or renew an occupational, professional, recreational or driver license, certification, permit or registration subject to suspension under ORS 25.750 to 25.783. The purpose of these rules is to establish requirements and procedures for requiring the applicant to provide a social security number and requirements for applicants who have not been issued a social security number by the United States Social Security Administration.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 25.785

Hist.: DO 4-2003, f. 12-31-03, cert. ef. 1-1-04

440-020-0015

Requirements and Procedures

(1) Except as otherwise set forth in this rule, no division of the Department of Consumer and Business Services will issue or renew an occupational, professional, recreational or driver license, certification, permit or registration subject to suspension under ORS 25.750 to 25.783 unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal if the applicant's social security number has previously been provided to the 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 Department of Consumer and Business Services will accept a written statement from the applicant to fulfill the requirements of section (1). The applicant need not provide this statement with the application for renewal if the statement has previously been provided to the agency and is in the record. 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) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6250.

(3) Licenses issued pursuant to OAR chapter 918 are subject to this rule except as otherwise specifically provided in OAR chapter 918.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 25.278

Hist.: DO 4-2003, f. 12-31-03, cert. ef. 1-1-04

440-055-0008

Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

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

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

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)—(d), (j)—(l), or (o)—(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)—(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced

ADMINISTRATIVE RULES

into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224, 705.135

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232

Hist.: DO 4-2003, f. 12-31-03, cert. ef. 1-1-04

440-100-0010

Appeal Period after Garnishment Challenge Denied

The Department may, at its discretion, utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting unpaid debts. If a debtor challenges the garnishment and the department, upon review of the claim, determines such debtor is not entitled to an exemption, the debtor may request a contested case hearing before an administrative law judge of the Office of Administrative Hearings in accordance with ORS 18.902. To be valid, the hearing request must be in writing and must be received by the department within 60 days of the date on the face of the Response to Challenge to Garnishment letter issued by the department.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 18.902

Hist.: DO 4-2003, f. 12-31-03, cert. ef. 1-1-04

Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

Adm. Order No.: FCS 3-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 441-001-0005, 441-001-0010, 441-001-0020, 441-001-0030, 441-001-0040, 441-001-0050, 441-002-0005, 441-002-0010, 441-002-0020, 441-002-0030, 441-002-0040

Subject: These rules consolidate procedural rules and public records rules for all of the division's programs. The Attorney General's model rules of procedure are adopted. Obsolete and outdated rules are repealed.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-001-0005

Model Rules of Procedure

The Director adopts by reference, for all programs administered by the Division of Finance and Corporate Securities, the Attorney General's Model Rules of Procedure as published in the Oregon Attorney General's Administrative Law Manual dated October 3, 2001.

Stat. Auth.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730,

706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: 183.341

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-001-0010

Notice of Rulemaking

(1) Except when acting in an emergency to adopt a temporary rule in accordance with ORS 183.335(5), before any proposed adoption, amendment, or repeal of an administrative rule in this chapter or in chapter 440, division 35, 200 or 300, the Director will give prior notice as required in ORS 183.335(1).

(2) In addition to the notice described in section (1) of this rule, depending upon the subject matter of the proposal, notice may be given to licensed entities, organizations affiliated with regulated industries, publishers of industry publications, and the media.

(3) Any person receiving notice of rulemaking under this rule may request notice be sent to that person electronically.

Stat. Auth.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730,

706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

ADMINISTRATIVE RULES

441-001-0020

Mailing List

(1) The following documents will be mailed to persons who request placement on the mailing list for the Division of Finance and Corporate Securities and pay an initial fee of \$30 and a biennial renewal fee of \$30 on or before January 1 of each odd-numbered year thereafter:

- (a) Proposals to adopt, amend, or repeal rules;
- (b) Adopted rules;
- (c) Legislation initiated by the Director (initial bill only); and
- (d) Enacted legislation affecting the statutes administered by the Director.

(2) All persons who have not paid the renewal fee by the due date shall be removed from the mailing list.

(3) The fee provisions of this rule shall not apply to:

- (a) Persons described in OAR 441-001-0010(2);
- (b) Governmental agencies;
- (c) Persons requesting placement on the mailing list who elect to receive documents electronically only; or

(e) Persons who establish to the satisfaction of the Director that extreme financial hardship would result from the payment required by section (1) of this rule.

Stat. Auth.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-001-0030

Contested Case Proceedings

(1) Except for appeals to courts of appropriate jurisdiction from decisions of the Director under ORS 707.080, 707.150 or 707.180, a person shall be considered as timely requesting a contested case hearing for any program administered by the Division of Finance and Corporate Securities if the written request for hearing is received by the Director within the time specified in the notice or proposed order served on the person. The time specified in the notice or proposed order shall be as stated in the applicable program's statutes or if none, in ORS Chapter 183.

(2) A contested case notice, in addition to the notice requirements of ORS 183.415(2), may include a statement that the record of the proceeding to date including information in the division file automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

(3) No later than 60 days after the expiration of the time for requesting a hearing, a party may request a hearing by filing a request and an affidavit which:

- (a) Shows the failure to request a hearing was due to mistake, inadvertence, surprise, or excusable neglect; and
- (b) Sets forth a meritorious defense to the matters contained in the order.

(4) If the Director allows the late request, the Director shall refer the matter to the Office of Administrative Hearings. This referral does not stay the order which became final on the default. If the late request is denied, the Director shall enter an order setting forth the reasons for such denial.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 59.295, 59.905, 97.948, 183.090, 183.430, 183.435, 192.845, 706.580, 707.080, 707.150, 707.180, 717.235, 717.265, 725.235

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-001-0040

Requests for Opinions and Interpretations

(1) For the purpose of this rule, a "request for opinion or interpretation" is defined as an informal inquiry requesting confirmation of the existence of an exemption, or requesting interpretation or advice on the applicability of any law administered by the Division of Finance and Corporate Securities.

(2) The intent of this rule is to formalize the opinion procedures so requests for opinions can be handled expeditiously.

(3) All requests for opinions and interpretations must:

(a) Be in writing, mailed or delivered to the Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street N.E., Room 410, PO Box 14480, Salem, Oregon 97309-0405 or faxed to 503-947-7862;

(b) Concisely state the question or show all operative facts including the reason why the opinion or interpretation is requested; and

(c) Contain an analysis of the law applicable to the facts.

(4) Responses to requests for opinion will be limited to:

(a) Notice that the Director takes the position that further action is not required;

(b) Notice that the Director takes the position that further action is required;

(c) Notice that the Director declines to take a position; or

(d) A modification of the foregoing where necessary for clarity.

(5) Responses of the Director, which do not constitute a rule or order, and are not binding on any court or third party:

(a) Will only be in writing and will be based upon representations made.

(b) May be revised if additional facts or circumstances exist which warrant a change.

(c) Will be declined where litigation is pending or is threatened.

(d) Will be declined where the questions are asked after the fact.

(e) Will be declined where significant additional research is required.

(f) Are binding on the Director and the requester on the state of facts presented unless altered or set aside by a court.

(6) Any party dissatisfied with an opinion or interpretation may petition the Director for a declaratory ruling pursuant to ORS 183.410.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 183.310

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-001-0050

Refund of Monies Paid

(1) This rule pursuant to ORS 293.445 provides for the refund of monies paid to the Department of Consumer and Business Services to which the Department has no legal interest, or in excess of the amount legally due when paid for any program administered by the Division of Finance and Corporate Securities.

(2) Refunds exceeding \$25 shall be made without a written request. If the refund owed is \$25 or less, within 3 years of making the payment the person who paid the money or that person's legal representative must make a written request for the refund.

(3) Fees paid for an application that is subsequently withdrawn, abandoned, or denied shall not be refunded.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 293.445

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-002-0005

Applicability of Rules

OAR 441-002-0005 to 441-002-0040 apply to all public records of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.430

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-002-0010

Access to Records

(1) The Director, in carrying out responsibilities as custodian of public records under statutes administered by the Division of Finance and Corporate Securities, shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties.

(2) Public records of the Division of Finance and Corporate Securities may be inspected or examined during normal working days and hours. The inspection or examination shall take place at the main office or any other reasonable location designated by the Director.

(3) Access to and disclosure of the public records are subject to ORS 192.410 to 192.505, 697.732, 706.720, and 722.419.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.430

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-002-0020

Requests to Inspect or Obtain Copies of Public Records

A request to inspect or obtain copies of a public record or information from public records shall be made in writing and shall include:

(1) The name, address or telephone number of the requester, except as considered unnecessary by the Director;

(2) An identification of the needed public record, or of the type and format of needed public record information, if known to the requester; and

(3) The number of copies requested of the record, if copies are requested.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.440

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

ADMINISTRATIVE RULES

441-002-0030

Payment for Inspection and Copies of Public Records

(1) A person who is receiving a copy of a public record or information from a public record shall pay for the Department's actual cost for:

(a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;

(b) Producing the copy or the information; and

(c) Other supplies or services necessary to furnish the copy or information.

(2) The Director may reduce or waive payment of the fee for access to a public record if the Director determines that the reduction or waiver will aid the effective administration of Department operations.

(3) The Director shall not require payment of fees for the first copy of publications, statutes, or administrative rules to public libraries, public educational institutions or to a federal, state, county or city agency participating in a cooperative program with the Department.

(4) The requester shall pay all fees for access to a public record in advance unless later payment is approved by the Director.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.440

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

441-002-0040

Fees for Inspection and Copies of Public Records

(1) The Director sets the following fees for copies of public records, including labor costs in producing the copies:

(a) Photocopies made on a standard office copy machine, 25 cents per sheet;

(b) Microfilm, 25 cents per copy;

(c) Existing mailing list printed on labels, \$1.25 per sheet of 20 labels;

(d) Video tape, \$15 per 2-hour tape;

(e) Audio cassette tape, \$6 per 120 minute cassette;

(f) Records produced on computer disk, \$3.50 per disk;

(g) Records produced on CD-rom disk, \$6 per disk; and

(h) Electronic records printed on standard office printer, 10 cents per sheet.

(2) The Director sets the following fees for staff labor, including time spent locating, compiling, reviewing for exempt materials, summarizing if requested, or supervising the requester's inspection of the records:

(a) \$20 per hour for secretarial/clerical staff; and

(b) \$35 per hour for professional/technical staff.

(3) The Director sets the following charges for other services:

(a) Certification of documents, \$5 per document in addition to copying or staff labor listed above;

(b) For computerized records compiled in-house or by the Department of Administrative Services, a \$44 job set-up fee, one-half cent (\$.005) per record on output, staff time at rates set in section (2) of this rule to write the program, plus the actual costs for the output medium, such as tape or disk, and shipping;

(c) Actual charges for compilation of records processed by other external parties; and

(d) Actual long distance charges for records transmitted by fax.

(4) There shall be a minimum \$5 fee for each public records request, unless the fee is waived by the Director.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.440

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

Adm. Order No.: FCS 4-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Amended: 441-730-0030

Subject: This amendment restores the annual license fee to the amount charged prior to reduction of that fee in February 2001, to adequately fund the administration of this program.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-730-0030

Fees, Charges Licensees Pay the Director

(1) Effective January 1, 2004, the annual license fee under ORS 725.185 is \$375, 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 divi-

sion 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.

(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

Adm. Order No.: FCS 5-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 441-880-0050

Subject: This rule implements a criminal records check requirement for loan originators, specifies categories of criminal convictions that will prevent a person from acting as a loan originator, and provides for examination and retention of these records.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-880-0050

Criminal Records Check

(1) Prior to employing a loan originator as defined in ORS 59.840(4), a licensee must conduct a criminal records check of the person, using the person's full legal name, date of birth, place of birth and social security number, searching federal records and all state records where the person has resided in the past 10 years. The licensee must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the criminal records check. A criminal records check conducted for any other employer within the previous six months will fulfill this requirement, provided that the scope of the previous check is within the parameters of this section and the licensee obtains a copy of the records check for his files.

(2) A criminal records check for a loan originator employed by a licensee on the effective date of this rule must be completed within 120 days.

(3) A loan originator applicant may not be hired and a currently employed loan originator's employment must be immediately terminated if the criminal records check discloses a disqualifying conviction as described in section (4) of this rule, provided that a licensee may retain a current employee in a capacity other than as a loan originator during the no-action letter process described in section (6) of this rule.

(4) The categories of criminal convictions that will prevent a person from acting as a loan originator are:

(a) Crimes punishable by death or imprisonment in excess of one year under the law under which the person was convicted, or

(b) Crimes involving false statement or dishonesty, including, but not limited to:

(A) Theft, misappropriation, or misapplication, of monies, services or goods in any amount;

(B) Falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) Taking of bribes, kickbacks, or other illegal compensation; or

(D) Deceiving the public or any person by means of swindling, false advertising or like acts.

(5) Within three business days of receiving the criminal records check report, the licensee shall notify the Director of the identity of any person for whom a criminal records check discloses a disqualifying conviction, using the Loan Originator Notification Form [Form 440-2772, available online and from the Department].

ADMINISTRATIVE RULES

(6)(a) Within 20 business days of notification to the Director as described in section (5) of this rule, a licensee who desires to hire or retain a loan originator for whom a criminal records check discloses a disqualifying conviction may make a written request for a letter from the Director that no enforcement action will be taken against the licensee with respect to the employment of such person. The request must contain the following information:

(A) The name of the person;

(B) A description of the disqualifying conviction from the criminal records check; and

(C) Supporting documents or other information demonstrating that this conviction is erroneously entered on this person's record or should otherwise not be deemed to be a disqualifying conviction.

(b) The Director in determining whether to grant the requested no-action letter and in determining whether conditions should be imposed if the no-action letter is granted may consider, but is not limited to considering:

(A) The licensing and consumer complaint history of the licensee;

(B) Input from any mortgage professional association; and

(C) The interests of consumers.

(c) A licensee who hires or retains a loan originator who has a disqualifying conviction after a requested no-action letter is denied, or without requesting a no-action letter, is subject to penalties as provided by ORS 59.992 and 59.996.

(7) Criminal records check documents, including any no action letter or denial of a no action letter request, received by the licensee shall be maintained in a secure location separate from personnel records, and shall be made available to the Director or an authorized representative of the Department for examination upon reasonable notice. These records shall be preserved by the licensee for three years after termination of employment. When the person who is subject to the check is not employed, the records shall be preserved by the licensee for two years from the date of receipt. After the retention period, the records shall be destroyed in a secure manner such as by shredding.

Stat. Auth.: Ch 526, 2003 OL

Stats. Implemented: Ch 526, 2003 OL

Hist.: FCS 5-2003, f. 12-30-03 cert. ef. 1-1-04

.....

Adm. Order No.: FCS 6-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 441-810-0200, 441-810-0210, 441-810-0220, 441-810-0230, 441-810-0240, 441-810-0250, 441-810-0260

Subject: These rules regulate the practices of a collection agency that enters into an agreement with an obligee to collect child support payments.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-810-0200

Applicability of Rules, Definition

(1) OAR 441-810-0200 to 441-810-0250 apply to the practices of a collection agency that enters into an agreement with an obligee to collect child support payments as provided in ORS 25.020.

(2) For the purposes of OAR 441-810-0200 to 441-810-0250, the term "debtor" includes the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

441-810-0210

Acquisition of Location Information

Any collection agency communicating with any person other than the debtor for the purpose of acquiring location information about the debtor shall:

(1) Identify himself, state that he is confirming or correcting location information concerning the debtor, and, only if expressly requested, identify his employer;

(2) Not state that such debtor owes any debt;

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the collection agency reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) Not communicate by post card;

(5) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(6) After the collection agency knows the debtor is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the collection agency.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

441-810-0220

Communication In Connection With Debt Collection

(1) Without the prior consent of the debtor given directly to the collection agency or the express permission of a court of competent jurisdiction, a collection agency may not communicate with a debtor in connection with the collection of any debt:

(a) At any unusual time or place or a time or place known or which should be known to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, a collection agency shall assume that the convenient time for communicating with a debtor is after 8 a.m. and before 9 p.m., local time at the debtor's location;

(b) If the collection agency knows the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the collection agency or unless the attorney consents to direct communication with the debtor; or

(c) At the debtor's place of employment if the collection agency knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.

(2) Except as provided in OAR 441-810-0210, without the prior consent of the debtor given directly to the collection agency, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a collection agency may not communicate, in connection with the collection of any debt, with any person other than the debtor, his attorney, a consumer reporting agency if otherwise permitted by law, the obligee, the attorney of the obligee, or the attorney of the collection agency.

(3) If a debtor notifies a collection agency in writing that the debtor refuses to pay a debt or that the debtor wishes the collection agency to cease further communication with the debtor, the collection agency shall not communicate further with the debtor with respect to such debt, except:

(a) To advise the debtor that the collection agency's further efforts are being terminated;

(b) To notify the debtor that the collection agency or obligee may invoke specified remedies which are ordinarily invoked by such collection agency or obligee; or

(c) Where applicable, to notify the debtor that the collection agency or obligee intends to invoke a specified remedy.

If such notice from the debtor under this section (3) is made by mail, notification shall be complete upon receipt.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

441-810-0230

Harassment or Abuse

A collection agency may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of debtors who allegedly refuse to pay debts, except to a consumer reporting agency.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in OAR 441-810-0210, the placement of telephone calls without meaningful disclosure of the caller's identity.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

ADMINISTRATIVE RULES

441-810-0240

False or Misleading Representations

A collection agency may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The false representation or implication that the collection agency is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of:

(a) The character, amount, or legal status of any debt; or

(b) Any services rendered or compensation which may be lawfully received by any collection agency for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the collection agency or obligee intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the debtor to:

(a) Lose any claim or defense to payment of the debt; or

(b) Become subject to any practice prohibited by OAR 441-810-0200 to 441-810-0250.

(7) The false representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a debtor.

(11) The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a collection agency, except that this section shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the debtor.

(16) The false representation or implication that a collection agency operates or is employed by a consumer reporting agency.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

441-810-0250

Unfair Practices

A collection agency may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(b) There is no present intention to take possession of the property; or

(c) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a debtor regarding a debt by post card.

(8) Using any language or symbol, other than the collection agency's address, on any envelope when communicating with a debtor by use of the mails or by telegram, except that a collection agency may use his business name if such name does not indicate that he is in the debt collection business.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

441-810-0260

Compliance with Fair Debt Collection Practices Act

A collection agency that is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of OAR 441-810-0200 through 441-810-0250.

Stat. Auth.: ORS 697.085

Stats. Implemented: ORS 25.020, 697.085, Ch 421 Sec 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

.....

Adm. Order No.: FCS 7-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Amended: 441-860-0020, 441-860-0050

Subject: These amendments restore the initial and renewal licensing fees to levels charged prior to reduction of the fees in October 2003.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-860-0020

Application Procedure

Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:

(1) A completed application on a form approved by the Director;

(2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090;

(3) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations which is dated not more than six months prior to submission of the application:

(a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;

(b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.

(4) Written Authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(3);

(5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;

(6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon;

(7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:

(A) Any director, officer, and shareholder with ownership of greater than or equal to 10 percent of outstanding shares of a corporate applicant;

ADMINISTRATIVE RULES

(B) Owner, if the applicant is an unincorporated sole proprietorship; and

(C) Each managing partner of a limited or general partnership.

(b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and

(c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(8) The information required pursuant to OAR 441-880-0030 for loan originators.

(9) The information required pursuant to OAR 441-860-0030 for each branch office.

(10) An initial application fee in the amount of \$500 plus a fee of \$100 for each initial branch office operated by a licensee, plus a fee of \$150 for each branch office added after the mortgage banker or mortgage broker license is issued:

(a) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010 is insufficient to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to increase the fees to an amount necessary to fund the administration of ORS 59.840 through 59.960 plus a reasonable emergency fund;

(b) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010, exceeds the amount necessary to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to decrease the fees to an amount necessary to administer ORS 59.840 through 59.960 plus a reasonable emergency fund;

(c) If licensees have paid the licensing fees pursuant to this rule and the Director finds that the total fees collected exceed the amount necessary to administer ORS 59.840 through 59.960 and provide a reasonable emergency fund, the Director may adjust the licensee's next renewal fee, following the making of such a finding, downward to provide for an equitable assessment of fees.

(11) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850(1), ORS 59.855(1) & ORS 59.900

Stats.: Implemented: ORS 59.845 & 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04

441-860-0050

Renewal of Mortgage Banker and Mortgage Broker License

Except as provided in section (6) of this rule, licensees shall renew for a 24-month period from the date of original licensing or last renewal. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the Director and shall include the following:

(1) A completed license renewal form approved by the Director.

(2) Financial statements on a compiled basis, consisting of a balance sheet and a statement of income or operations, prepared in accordance with generally accepted accounting principles, which is dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of the application must also be submitted.

(3) A license renewal fee in the amount of \$500 (\$250 per year) plus a fee of \$100 (\$50 per year) for each branch office license which is renewed.

(4) Current information on officers, directors, or persons who own ten percent or more of the outstanding shares of a corporate applicant, or every owner if the applicant is unincorporated.

(5) The information required pursuant to OAR 441-880-0030 for loan originators.

(6) A licensee may renew their license, one time only, for less than the full 24 months but more than 12 months for the purpose of changing the anniversary date of license renewal. The licensee shall pay a prorated renewal fee equal to \$20.84 for each month of renewal for the principal office plus \$4.16 for each month of renewal for each branch office.

(7) If a licensee submits an application which is incomplete in any respect, the Director will contact the licensee to request the required information. The licensee shall have 10 days to respond to the request for additional information. If the licensee fails to respond to the request, the renewal application will not be processed, and the license shall be canceled on the expiration date.

(8) If a licensee's license is canceled pursuant to section (7) of this rule, and the licensee remedies the incomplete application before the scheduled license expiration date, the license will be renewed for a two-year period.

Stat. Auth.: ORS 59.850(7), ORS 59.855(2) & ORS 59.900

Stats. Implemented: ORS 59.855 & 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04

Adm. Order No.: FCS 8-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 441-740-0030

Subject: This rule prescribes the books, records and documents to be submitted by each licensed pawnbroker to the director during any calendar year in which an examination is not conducted at the licensed location of the pawnbroker.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-740-0030

Records and Information to be Submitted to Director

At least once during any calendar year in which an examination is not conducted under ORS 726.250(2) at the licensed location of the pawnbroker, the pawnbroker shall submit to the director no later than the deadline specified by the director:

(1) A signed and dated response to questions concerning:

(a) Changes in the business ownership, location and operations since the last examination;

(b) Current business hours;

(c) Changes in rate of interest or fees charged since the last examination;

(d) Reports of loan activity to the local police agency;

(e) Identity of all managers and all bookkeepers currently employed;

(f) Changes in the pawnbroker surety bond since the last examination;

(g) Total number and dollar amount, between the last examination and a specific date selected by the director, of new loans made, forfeitures, and police pickups; and

(h) Number and dollar amount of open loans as of the specific date selected by the director.

(2) Copies of documents, for a specific date selected by the director, showing:

(a) All new pawns made;

(b) All pawns redeemed or renewed; and

(c) All forfeiture letters mailed to a consumer for a pawn of \$500 or more, or if none, the most recent forfeiture letter on a pawn of \$500 or more.

(3) A copy of the declarations page of an insurance policy or policies showing current fire, theft and burglary coverage.

(4) Any additional documents or responses requested by the director after examination of the materials submitted under sections (1) through (3) of this rule.

Stat. Auth.: ORS 726.250

Stats. Implemented: ORS 726.250

Hist.: FCS 8-2003, f. 12-30-03, cert. ef. 1-1-04

Adm. Order No.: FCS 9-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Amended: 441-175-0010, 441-175-0055, 441-175-0130

Rules Repealed: 441-175-0035, 441-195-0035

Subject: The amendments delete any requirements that mortgage lender "salespersons" be licensed under the Oregon Securities Law,

ADMINISTRATIVE RULES

except when acting as an agent of an issuer. Two obsolete provisions concerning mortgage lenders are repealed.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-175-0010

Definitions

As used in these rules:

(1) The term "Associated Person" shall mean any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "Associated Person" shall not include persons whose functions are only clerical or ministerial.

(2) The term "CRD" means the Central Registration Depository of the National Association of Securities Dealers, Inc. CRD is the computer service maintained by the National Association of Securities Dealers, Inc. to register broker-dealers and salespersons.

(3) The term "The Completion of the Transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer except as provided in subsection (b) of this section, the time when such customer pays the broker-dealer any part of the purchase price, or if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security through or to a broker-dealer except as provided in subsection (d) of this section, if the security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer and, if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer; and

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers the security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

(4) The term "Controlling Security Holder" means a person who exercises control as defined under ORS 59.15(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

(5) The term "Director" means the Director of the Department of Consumer and Business Services.

(6) The term "IARD" means the Investment Adviser Registration Depository maintained by the National Association of Securities Dealers Regulation, Inc. to register investment advisers and investment adviser representatives.

(7) The term "Independent Accountant" means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(8) The term "Interim Financial Statement" means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations. The Focus Report filed with the Securities and Exchange Commission is acceptable as an interim financial statement.

(9) The term "NASD" means the National Association of Securities Dealers, Inc.

(10) The term "Non-NASD Broker-Dealer" means a broker-dealer who is not a member of the National Association of Securities Dealers, Inc.

(11) The term "SEC" means United States Securities and Exchange Commission.

(12) The term "Securities Section" includes the employees assigned to the Securities Section of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services and the Director of the Department of Consumer and Business Services.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-

2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

441-175-0055

Rules of Fair Practice for Mortgage Banker and Mortgage Broker Licensees

Any mortgage banker or mortgage broker ("licensee") licensed pursuant to ORS 59.840 to 59.980 and relying upon exclusion from the definition of "broker-dealer" pursuant to ORS 59.015(1)(h) in connection with the offer and sale of registered offerings of securities involving real estate paper shall comply with the following rules of fair practice:

(1) Securities Registration: All offerings shall be registered pursuant to the provisions of ORS 59.065 and OAR chapter 441, division 065.

(2) Salesperson Licensing: All natural persons involved in the offer and sale of securities shall be licensed as issuer salespersons pursuant to the provisions of ORS 59.175 and OAR 441-175-0120. In addition, the employing mortgage banker or mortgage broker must file material amendments to the salesperson license application pursuant to the provisions of OAR 441-175-0105.

(3) Advertising: All advertising involving the offering must be filed with and accepted by the Director prior to its use.

(4) Supervision: The responsibility for supervision of all persons engaged by a licensee to effect securities transactions is that of the licensee. This supervision includes reviewing and authorizing all securities activities of the licensee's salespersons.

(5) Investor Funds and Securities: All funds received in connection with an offering must be segregated from those of the licensee, and:

(a) All investor funds must be deposited in a client trust account which is free from all claims attachment or levy by creditors of the licensee; and

(b) All investor securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the licensee.

(6) Books and Records: The licensee must create and maintain those books and records required in OAR chapter 441, division 865.

(7) Investor Suitability:

(a) A licensee shall not recommend a securities transaction to an investor unless the licensee has reviewed the terms of the transaction and, after reasonable inquiry by the licensee, the licensee has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of:

(A) Information furnished by the investor (including the investor's investment objectives and financial situation); and

(B) Any other relevant information known to the licensee.

(b) The requirements of subsection (a) of this section, except for the requirement to review the terms of the transaction, may be satisfied if the investment is in fact suitable for the particular investor;

(c) Specific investor suitability requirements established pursuant to rule or order of the Director shall take precedence over the general investor suitability requirements of subsection (a) of this section.

Stat. Auth.: ORS 59.235 & 59.285

Stats. Implemented: ORS 59.15(1), 59.135 & 59.235

Hist.: FCS 7-1994, f. & cert. ef. 5-13-94; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

441-175-0130

Licensing of Salespersons to NASD Broker-Dealers

(1) For purposes of ORS 59.175, all NASD salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the NASD to a broker-dealer who is a member in good standing of the NASD;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon pursuant to ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the Director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee of \$15 for each salesperson; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

ADMINISTRATIVE RULES

Administrative Correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

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

Adm. Order No.: ID 9-2003

Filed with Sec. of State: 12-26-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 836-051-0106

Rules Amended: 836-031-0755, 836-031-0760, 836-051-0101

Subject: This rulemaking amends existing rules governing the determination of minimum nonforfeiture standards in order to replace tables currently in use (1980 Standard Ordinary Mortality Tables) with the 2001 CSO Mortality Table as established in the NAIC model regulation. Ancillary conforming and corrective changes are made to rules governing valuation of life insurance policies.

Copies of this rule can be accessed on our website at www.oregoninsurance.org. Click on "What's New" or "Laws, Rules & Bulletins." If you do not have internet access, a paper copy of the rule can be obtained by calling Sue Munson at 503-947-7272.

Rules Coordinator: Sue Munson—(503) 947-7272

836-031-0755

Applicability

OAR 836-031-0750 to 836-031-0775 apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, subject to OAR 836-051-0106 and the following exceptions and conditions:

(1) The following exceptions apply:

(a) OAR 836-031-0750 to 836-031-0775 do not apply to any individual life insurance policy issued on or after January 1, 2000, if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this regulation, that guarantees the premium rates of the new policy. OAR 836-031-0750 to 836-031-0775 also do not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(b) OAR 836-031-0750 to 836-031-0775 do not apply to any universal life policy that meets all the following requirements:

(A) Secondary guarantee period, if any, is five years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on CSO valuation tables as defined in OAR 836-031-0760 and the applicable valuation interest rate; and

(C) The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.

(c) OAR 836-031-0750 to 836-031-0775 do not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(d) OAR 836-031-0750 to 836-031-0775 do not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(e) OAR 836-031-0750 to 836-031-0775 do not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(2) The following conditions apply:

(a) Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of OAR 836-031-0770.

(b) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of OAR 836-031-0775.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 733.030, 733.210 & 733.300 - 733.322

Hist.: ID 7-1999, f. 12-29-99, cert. ef. 1-1-00; ID 9-2003, f. 12-26-03, cert. ef. 1-1-04

(b) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule, is required to pass the S-63 (Uniform Securities Agent State Law Examination) with a minimum score of 70 percent. In addition to the S-63, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

- (a) S-7 for a general securities license;
- (b) S-3 for a commodity futures license;
- (c) S-5 for an interest rate options license;
- (d) S-6 for an investment company, mutual funds or variable contracts license;
- (e) S-15 for a foreign currency options license;
- (f) S-22 for a limited partnership or tax shelter license;
- (g) S-42 for an options license;
- (h) S-52 for a municipal bonds license; or
- (i) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the Director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the Director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this State.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer or investment adviser if all employers enter into an undertaking on a form provided by the Securities Section. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the Director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Director.

(9) Unless disqualified for automatic licensing in Oregon pursuant to OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the Director will either approve the application, condition or restrict the license pursuant to OAR 441-225-0030, or deny it pursuant to ORS 59.205 to 59.225. If the Director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS Chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with the NASD.

(13) If the application, the undertaking, any supporting material or any representations made to the Director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for an NASD salesperson expires on December 31 of each year. The NASD broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94;

ADMINISTRATIVE RULES

836-031-0760

Definitions

As used in OAR 836-031-0750 to 836-031-0775:

(1) "Basic reserves" means reserves calculated in accordance with ORS 733.306.

(2) "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined in this section. All calculations are made using the 1980 CSO valuation tables, as defined in section (6) of this rule, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after January 1, 2000, and adopted by rule by the Director of the Department of Consumer and Business Services for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in OAR 836-031-0765(2). [Example not included. See ED. NOTE.]

(3) "Deficiency reserves" means the excess, if greater than zero, of minimum reserves calculated in accordance with ORS 733.320 over basic reserves.

(4) "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

(5) "Maximum valuation interest rates" means the interest rates defined in ORS 733.310 (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) "1980 CSO Valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

(7) "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in OAR 836-031-0775(1)(c), if any, or else the minimum premium described in OAR 836-031-0775(1)(d).

(8)(a) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(A) The present value of the death benefits within the segment, plus

(B) The present value of any unusual guaranteed cash value (according to OAR 836-031-0770(4)) occurring at the end of the segment, less

(C) Any unusual guaranteed cash value occurring at the start of the segment, plus

(D) For the first segment only, the excess of subparagraph (i) over subparagraph (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(b) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(d) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

(9) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

(10) "Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

(11)(a) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(A) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(B) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of subparagraph (i) over subparagraph (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

(ii) A net one year term premium for the benefits provided for in the first policy year.

(b) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

(12) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

[ED. NOTE: Formula referenced available from the agency.]

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 733.030, 733.210 & 733.300 - 733.322

Hist.: ID 7-1999, f. 12-29-99, cert. ef. 1-1-00; ID 9-2003, f. 12-26-03, cert. ef. 1-1-04

836-051-0101

Statutory Authority; Purpose; Applicability; and Effective Date

(1) OAR 836-051-0101 to 836-051-0115 are adopted pursuant to the general rulemaking authority of the Director in ORS 731.244, and specific authority of ORS 733.306 and 743.215 for approving mortality tables adopted by the National Association of Insurance Commissioners for use in determining minimum valuation and nonforfeiture standards.

(2) OAR 836-051-0101 to 836-051-0115 apply to policies of ordinary life insurance issued on the standard basis.

Stat. Auth.: ORS 731.244, 733.306 & 743.215

Stats. Implemented: ORS 733.306

Hist.: IC 5-1985, f. & ef. 11-20-85; ID 15-1996, f. & cert. ef. 11-12-96; ID 15-1997, f. & cert. ef. 10-29-97; ID 9-2003, f. 12-26-03, cert. ef. 1-1-04

836-051-0106

Life Insurance Valuation and Nonforfeiture Standards

(1) The following definitions apply in this rule:

(a) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and the age-last-birthday bases of the mortality tables.

(b) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(c) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(d) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(e) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) The 2001 CSO Mortality Table may be used as follows:

(a) At the election of the insurer for any one or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004 and before January 1, 2009 and to which ORS 733.306 and 743.215, and OAR 836-031-0765(1) and (2), are applicable. If

ADMINISTRATIVE RULES

the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which ORS 733.306 and 743.215, and OAR 836-031-0765(1) and (2), are applicable.

(3) Conditions governing use of tables are as follows:

(a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

(A) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

(B) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by ORS 733.312 and 733.322 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

(C) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

(c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of section 4 of this rule, ORS 733.306 and 743.215 and OAR 836-031-0770 relative to use of the select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed with the Director shall be based on an asset adequacy analysis as specified in OAR 836-031-0670. The Director may exempt an insurer from this requirement if it only does business in this state and in no other state.

(4) The 2001 CSO Mortality Table applies to OAR 836-031-0750 to 836-031-0775 as follows:

(a) The 2001 CSO Mortality Table may be used in applying OAR 836-031-0750 to 836-031-0775 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in section (2) of this rule:

(A) OAR 836-031-0755(1)(b)(B): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(B) OAR 836-031-0760(2): All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in OAR 836-031-0770(1)(d). The value of "qx+k+t-1" is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(C) OAR 836-031-0765(1): The 2001 CSO Mortality Table is the minimum standard for basic reserves.

(D) OAR 836-031-0765(2): The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in OAR 836-031-0765(2)(c). In demonstrating compliance with these conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

(E) OAR 836-031-0770(3): The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(F) OAR 836-031-0770(5)(d): The calculations specified in OAR 836-031-0770(5) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(G) OAR 836-031-0770(6)(d): The calculations specified in OAR 836-031-0770(6) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(H) OAR 836-031-0770(7)(b): The calculations specified in OAR 836-031-0770(7) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(I) OAR 836-031-0775(1)(a)(B): The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(b) Nothing in this section shall be construed to expand the applicability of OAR 836-031-0750 to 836-031-0775 to include life insurance policies exempted under OAR 836-031-0755(1).

(5) The following provisions apply to an insurer's use of Gender-Blended Tables

(a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this section of this rule.

(b) The insurer may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) It shall not, in and of itself, be a violation of ORS 746.015 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

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

Stat. Auth.: ORS 731.244, 733.306 & 743.215

Stats. Implemented: ORS 733.306

Hist.: ID 9-2003, f. 12-26-03, cert. ef. 1-1-04

Department of Consumer and Business Services, Minority, Women and Emerging Small Business Chapter 445

Adm. Order No.: MWESB 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 2-15-04

Notice Publication Date: 12-1-03

Rules Amended: 445-050-0005, 445-050-0020, 445-050-0030, 445-050-0040, 445-050-0050, 445-050-0060, 445-050-0080, 445-050-0090, 445-050-0155

Subject: OAR 445-050-0005(1): This rule is being amended to mirror the language used in 49 Code of Federal Regulations, chapter 26. The current language precludes individuals who are not Socially and Economically Disadvantaged from transferring or giving capital, tangible personal assets or expertise to an applicant who is applying for Disadvantaged Business Enterprise certification.

OAR 445-050-0005(1)(b): This rule is being amended to mirror the language used in 49 Code of Federal Regulations, chapter 26. The current language states that a business must have adequate resources to perform work and does not allow for leasing of equipment as an option.

OAR 445-050-0005(6)(a)(D)(E)(F): This rule is being amended to mirror the language used in 49 Code of Federal Regulations, chapter 26. Additional minority groups are included under the definition of "Minority".

OAR 445-050-0005(12)(a)(b): These rules are being amended to list the current North American Industry Classification System size limits, averaged over the previous three fiscal years, for general contractors (from \$27,500,000 to \$28,500,000) and specialty contractors (from \$11,500,000 to \$12,000,000).

OAR 445-050-0005(12)(c): Subparagraph (c) of this rule is being deleted and replaced. Rather than list engineering, surveying and architecture separately with a maximum of \$4,000,000 (the amounts actually vary between 4 and 6 million) these industries will be included in the code size standards for all other industries.

OAR 445-050-0005(12)(c): The following paragraph replaces subparagraph (c). This new paragraph now states: For firms not included in subsections (a) and (b) - Small Business Administration (SBA) the North American Industry Classification System (NAICS) code size standard established under 13 CFR 121.

OAR 445-050-0005(12)(d): This rule is being amended and subparagraph (e) now moves up as subparagraph (d). This rule clarifies that DBE firms must meet current SBA business size standard limits for each type of work not to exceed \$17,420,000. The rule remains the same for firms seeking MBE/WBE certification. They must meet the current SBA business size standard limit for a primary area of work. The firm's primary area of work is determined by percentage of income.

ADMINISTRATIVE RULES

OAR 445-050-0020(1)(h): This rule is being amended to mirror the language used in 49 Code of Federal Regulations, chapter 26. The current language states that a business must have sufficient machinery, equipment and employees to operate and does not allow for leasing of machinery, equipment, and employees as an option. The proposed rule allows leasing where a non-DBE firm, in a same or similar business, would do likewise.

OAR 445-050-0030(4): The current rule states that the one or more Qualifying Individual(s) must have made a contribution of capital to the business. The new amended rule changes the word "capital" to "assets". The word "assets" is being used because it is more encompassing of potential contributions that Qualifying Individuals could make to a business. Expertise is an example of an asset contribution.

OAR 445-050-0030(8): This rule is being amended by including new paragraph eight. It mirrors the federal DBE requirement that a business must have or lease sufficient machinery, equipment and employees to operate. This shows that a business is established and able to operate.

OAR 445-050-0030(9): Qualifying Individuals must have training and experience in the field(s) of operation for which certification is sought. Amended language provides examples and separates construction from professional related activities. Amended subparagraph (9)(a) makes it a requirement that if licensing is required for the field in which the firm is requesting certification, the Qualifying Individual must hold the essential license.

OAR 445-050-0040(1): This rule is being amended in compliance with 49 CFR, chapter 26. Businesses wishing to be certified as Disadvantaged Business Enterprises must complete the US DOT Uniform Certification Application. Additionally, a notice is being given to business owners that incomplete applications will be denied.

OAR 445-050-0040(2): This amended rule list a new mailing address for OMWESB. The new address is: P.O. Box 14480, Salem, OR 97309-0405.

OAR 445-050-0050(1): This rule is amended and replaces paragraph (1). Certified businesses must use the current business name as registered with the Secretary of State Corporation Division for the OMWESB directory. If an assumed business name is used for contracting purposes, it must be written in conjunction with the registered business name.

OAR 445-050-0050(2)(3): These rule are amended and move downward to paragraphs (2) and (3). The rules clarify that the OMWESB directory is maintained in an electronic format and available on-line. The directory will indicate the certification status of each firm. Additionally, OMWESB shall update the directory no less than on a quarterly basis.

OAR 445-050-0060(4): This rule is amended and separates the requirement from DBE and MBE/WBE firms in the submission of an affidavit and federal tax information for the one-year and two-year anniversaries of the certification date. This will be required of DBE firms only and MBE/WBE certified firms will be exempt.

OAR 445-050-0080(4): This rule is amended and mirrors the federal language regarding the Federal and State of Oregon Freedom of Information and Privacy Acts regarding Third Party Complaints. The rule states that information concerning DBE, MBE, and WBE programs may be made available to the public if it is not prohibited by federal or state law. It also establishes that OMWESB may maintain the identity of complainants confidential throughout the course of Third Party Complaint investigations.

OAR 445-050-0080(5): This rule is amended to include a preliminary investigative review prior to notifying a DBE/MBE/WBE of a Third Party Complaint. If the preliminary investigative results show good cause for in-depth investigation, OMWESB will notify the certified firm accordingly.

OAR 445-050-0080(6): This amended rule provides hearing and appeal rights to DBE/MBE/WBE firms in situations where decertification is proposed as a result of a Third Party Complaint

OAR 445-050-0090(1): This rule is amended to allow a Third Party Challenge of DBE/MBE/WBE firms who are not only certified but also those who are seeking certification.

OAR 445-050-0090(3)(d): This rule is amended by deleting the requirement of divulging the identity of the challenging party. That information will be protected if allowed by federal and state laws in reference to confidentiality, or may be divulged upon completion of the investigation.

OAR 445-050-0090(4): This rule is amended and adds paragraph 4. This rule lists the steps OMWESB will take after the completion of a Third Party Challenge.

OAR 445-050-0090(5): This rule is amended and adds paragraph 5. This rule affords appeal rights regarding final determinations of Third Party Challenges made by OMWESB.

OAR 445-050-0090(6): This rule is amended and adds paragraph (6). The rule mirrors the federal language regarding the Federal and State of Oregon Freedom of Information and Privacy Acts. The rule states that information concerning DBE, MBE, and WBE programs may be made available to the public if it is not prohibited by federal or state law. It also establishes that OMWESB may maintain the identity of complainants confidential throughout the course of third party challenge investigations.

OAR 445-050-0155(7)(a): This rule is amended and adds paragraph 7 and subparagraph (a). The rule mirrors the federal language regarding the Federal and State of Oregon Freedom of Information and Privacy Acts. The rule states that information concerning ESB complaints may be made available to the public if it is not prohibited by federal or state law. It also establishes that OMWESB may maintain the identity of complainants confidential throughout the course of complaint investigations.

Rules Coordinator: Gabriel M. Silva—(503) 947-7948

445-050-0005

Definitions

As used in these rules, the following terms shall have the following definitions, unless the context requires otherwise:

(1) "Contribution of Capital" means a real and substantial contribution of capital, tangible personal assets, or expertise to acquire ownership interest in the firm. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee.

(2) "Control" or "Controlled" means that Operational and Managerial Control of all aspects of the business is exercised by one or more Qualifying Individual(s).

(3) "Disadvantaged Business Enterprise" or "DBE" means a business that meets the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26.

(4) "Independence" or "Independent" means:

(a) The business must not be inextricably associated with or dependent upon any non-Disadvantaged, non-Minority or non-woman owned firm;

(b) The business owns or leases equipment and resources necessary to perform its work, (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm); and

(c) The business owner has sufficient expertise in the firm's field of operation to operate the firm independently.

(5) "Management Control" or "Management" means that the Qualifying Individual(s) has/have responsibility for the critical areas of business operations and has the demonstrated ability to make independent and unilateral business decisions needed to guide the future of the business. When the actual management of the business is contracted out to individuals other than the owner or is delegated to employees, those persons who have the power to hire and fire these managers exercise Management Control. Areas of control include, but are not limited to:

(a) Authority and responsibility to sign pay checks and letters of credit;

(b) Authority to negotiate and sign for insurance and/or bonds;

(c) Authority to negotiate for banking services;

(d) Authority to negotiate and sign contracts.

(6)(a) "Minority" means a person who is a citizen or lawful permanent resident of the United States, who is a:

ADMINISTRATIVE RULES

(A) Black American which includes persons having origins in any of the Black racial groups of Africa;

(B) Hispanic American which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(C) Native American which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

(i) A person must prove he/she is enrolled or registered by the tribe, clan, nation or Alaskan Native Regional or Village Corporation. Alternatively, the person can provide state or federal certification of enrollment in these groups.

(ii) If a person cannot prove enrollment or registration, he/she must provide proof of qualification to participate in awards or judgments rendered by a federal or state judicial body in favor of the tribe, clan, nation or Alaskan Native Regional or Village corporation.

(iii) A person does not need to reside on a federal or state Indian reservation.

(D) Asian-Pacific American which includes persons whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirabati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(E) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(F) Women;

(G) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration and/or that are designated under 49 CFR Part 26.

(6)(b) Bona fide Minority group membership shall be established on the basis of evidence to support the individual's claim that the individual is a member of a Minority group and is so regarded by the particular Minority community. However, the OMWESB is not required to accept this claim if it determines the claim to be invalid. If the Minority community does not exist in Oregon, the burden of proof shifts to the applicant to prove he/she is a Socially and Economically Disadvantaged Individual.

(7) "Minority Business Enterprise" or "MBE" means a business that meets the eligibility standards set out in OAR 445-050-0030.

(8) "OMWESB" means the Office of Minority, Women and Emerging Small Business in the Department of Consumer and Business Services.

(9) "Operational Control" or "Operations" means the Qualifying Individual(s) independently makes the basic decisions for the daily operations of the business. The Qualifying Individual(s) must possess the requisite experience in the field of operations for which certification is sought, control the board of directors or management of the business, and receive salary or profits commensurate with his/her ownership interest. Absentee ownership or title ownership by an individual who does not take an active role in making the basic decisions for the daily operations of the business does not constitute Operational Control.

(a) The Qualifying Individual(s) should have training and experience in the field(s) of operation for which certification is sought. The Qualifying Individual(s) does not need to have hands on or direct control of, or expertise in, every aspect of the business' affairs so long as the owner is able to intelligently use and critically evaluate information presented by employees.

(b) The possession of a specialty license by the Qualifying Individual(s) is not a prerequisite for Operational Control. The Qualifying Individual(s) must possess sufficient knowledge about the business to enable him, or her, to maintain day to day control over the operational aspects of the business. In order to determine that the Qualifying Individual(s) has/have the technical expertise and competence to maintain Operational Control, the Qualifying Individual(s) will be required to submit proof of expertise. Expertise can be documented in two ways for trades or professions requiring a specialty license:

(A) The Qualifying Individual(s) may submit a copy of their essential license(s), or

(B) OMWESB may employ the assistance of state resources to help evaluate whether a Qualifying Individual(s) possesses a working knowledge of the technical requirements of their field and is able to evaluate information provided by subordinates in a critical and intelligent manner. State resources may include technical experts from state agencies such as the Building Codes Division, the Board of Engineering Examiners, the Landscape Contractors Board and the Real Estate Agency.

(10) "Ownership" or "Owned" means the Qualifying Individual(s) own a minimum of 51% of each class of voting stock and at least 51% of the aggregate of all classes of stock or own a minimum of 51% of the membership interests.

(11) "Qualifying Individual(s)" means owners/applicants who belong to one of the recognized ethnic Minority Groups, women, or other individuals determined by OMWESB on a case-by-case basis to be socially and economically disadvantaged. For DBE certification the individuals must meet the requirements of 49 CFR 26. The Qualifying Individual(s) must be a citizen of the United States or a permanent resident.

(12) "Small Business" means a small business as defined pursuant to 13 CFR 121. A Small Business shall not include any concern or group of concerns controlled by the same Qualifying Individual or individuals which have average annual gross receipts in excess of the North American Industry Classification System (NAICS) size limit over the previous three fiscal years. A Small Business must not exceed the following size standards:

(a) General Contractors — \$28,500,000;

(b) Specialty Contractors — \$12,000,000;

(c) For firms not included in subsections (a) and (b) — Small Business Administration (SBA) the North American Industry Classification System (NAICS) code size standard established under 13 CFR 121.

(d) Firms seeking federal DBE certification must meet current Small Business Administration (SBA) business size standard limits for each type of work the firm seeks to perform not to exceed 17,420,000. Firms seeking state MBE/WBE certification must meet the current SBA business size standard limit for a primary area of work. The firm's primary area of work is determined by percentage of income.

(13) "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Minorities or any other minorities or individuals found to be disadvantaged by the SBA pursuant to Section 8(a) of the Small Business Act.

(a) It is a rebuttable presumption that Minorities and women are socially and economically disadvantaged.

(b) The OMWESB may also determine on a case by case basis that individuals who are not women or Minorities are Socially and Economically Disadvantaged Individuals.

(c) Socially disadvantaged individuals are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities.

(A) The social disadvantage must stem from the individual's color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control. Social disadvantage cannot be based on factors common to small business.

(B) The individual must demonstrate that:

(i) He or she personally suffered the disadvantage as a result of treatment experienced in the United States;

(ii) The disadvantage was chronic, long-standing, and substantial, not fleeting or insignificant; and

(iii) The disadvantage negatively affected his or her entrance or advancement in the business world.

(d) Economically disadvantaged individuals are Socially disadvantaged individuals whose ability to compete in the United States economy has been impaired due to diminished capital and credit opportunities compared to non-socially disadvantaged individuals in the same or similar business. The Socially and Economically Disadvantaged Individual(s) will be required to submit a Certification of Social and Economic Disadvantage and Statement of Personal Net Worth.

(14) "USDOT" means the United States Department of Transportation.

(15) "Woman Business Enterprise" or "WBE" means a business that meets the eligibility standards set out in OAR 445-050-0030.

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

Stat. Auth.: ORS 200.005

Stats. Implemented: ORS 200.005

Hist.: EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0005; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0020

Eligibility Standards for Disadvantaged Business Enterprises

(1) To be eligible for certification as a Disadvantaged Business Enterprise, a business must meet the following criteria:

(a) The business must be in existence, operational and in business for a profit.

(b) The business must be a Small Business, but in no case may the average annual gross receipts exceed \$17,420,000.

(c) The business must be Controlled by one or more Socially and Economically Disadvantaged Individual(s).

(d) The business must be Owned by one or more Socially and Economically Disadvantaged Individual(s).

ADMINISTRATIVE RULES

(e) The one or more Socially and Economically Disadvantaged Individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest.

(f) The business must be Independent.

(g) The business must be properly licensed and registered in the state of Oregon.

(h) The business must have or lease (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm) sufficient machinery, equipment and employees to operate. In making this determination the OMWESB shall compare the operations of the DBE to a non-DBE operation in the same or similar business.

(2) The OMWESB will utilize 49 CFR 26 to review for eligibility for certification as a DBE. In addition, OMWESB will apply written directives of the USDOT, administrative guidelines and written decisions of the USDOT on appeals of state certification decisions so long as they are in accord with these rules.

(3) In making determinations under this section the OMWESB shall not consider whether the business has previously performed or would be able to perform a commercially useful function. Repeated failure by a business to perform a commercially useful function may, however, indicate that the business is not Independent, Owned or Controlled by a Socially and Economically Disadvantaged Individual.

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

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0020; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0030

Eligibility Standards for Minority and Women Business Enterprises

To be eligible as a Minority or Woman Business Enterprise, a business must meet the following criteria. The OMWESB may perform on-site investigations to verify any of the requirements of this rule.

(1) The business must be a Small Business. The average annual gross receipts for a firm and its affiliates for the previous three fiscal years must not exceed the amounts established under SBA's NAICS codes.

(2) The business must be Controlled by one or more Qualifying Individual(s).

(a) The Qualifying Individual(s) must establish Minority Group or gender status by identification, US citizenship, birth certificate, driver's license, state identification cards, naturalization documents, military discharge papers, visa, passport, etc., or evaluation for social and economic disadvantage.

(3) The business must be Owned by one or more Minority or women owners.

(4) The one or more Qualifying Individual(s) must have made a contribution of assets to the business.

(5) The business must be Independent.

(6) The business must be in existence, operational and in business for profit.

(7) The business must be properly licensed, and if required, legally registered in the state.

(8) The business must have or lease (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm) sufficient machinery, equipment and employees to operate. In making this determination the OMWESB shall compare the operations of the MBE/WBE to a non-MBE/WBE operation in the same or similar business.

(9) The Qualifying Individual(s) must have training and experience in the field(s) of operation for which certification is sought. Examples of construction related activities, including but not limited to:

(a) Currently holds or has previously held the essential license in the field in which this firm operates;

(b) Has read and interpreted blueprints and specifications;

(c) Has done take offs;

(d) Has prepared estimates and bids;

(e) Goes on site and determines if the work is proceeding in accordance with the plans;

(f) Answers technical questions from subordinates;

(g) Resolves field problems;

(h) Supervises field operations.; Examples of professional related activities, including but not limited to;

(i) Has a college degree in the field of expertise;

(j) Has years of experience and training in the field of expertise;

(k) Has experience in project management in the field of expertise.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0030; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0040

Application Form and Procedure

(1) Application Form(s). Businesses wishing to be certified as Disadvantaged Business Enterprises must complete the Uniform Certification Application form required by the 49 CFR 26, Appendix G. Minority or Woman Business Enterprises shall complete the application form designed by the OMWESB. The application forms are designed to solicit information to determine whether an applicant business is eligible for certification as a DBE, MBE, or WBE under this chapter. The applications are designed to provide the OMWESB with sufficient information to determine whether an applicant is eligible for certification for both federally assisted and non-federally assisted contracts. Incomplete applications will be "Denied."

(2) Submittal of Application. The completed application form, together with all required supporting documentation, shall be submitted by mail or in person to the Office of Minority, Women and Emerging Small Business, P.O. Box 14480, Salem, OR 97309-0405

(3) Processing Applications. The OMWESB will conduct a review and take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.

(4) On-site Investigations. The OMWESB must conduct an on-site investigation and interview at the owner's place of business for all applicants seeking DBE certification. The purpose of the on-site investigation is to verify the information submitted with the application form. The applicant shall fully cooperate with such an investigation and make available any additional information requested by the OMWESB. DBEs applying from outside the State of Oregon are required to have an on-site interview conducted by their home state jurisdiction. The OMWESB may conduct an on-site investigation and interview at the owner's place of business to verify information necessary for making eligibility decisions for applicants seeking MBE/WBE certification. Last minute on-site cancellations and no shows by a DBE Applicant could result in a DBE being denied certification for failure to submit information needed to make a determination.

(5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the federal requirements (49 CFR Part 26). As part of its investigation, the OMWESB may require all firms to provide information in addition to that requested on the application form. The applicant has the burden of proving that it is eligible for certification and recertification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. The DBE/MBE/WBE shall notify the OMWESB of any changes in its Ownership or Management which may affect its continued eligibility as a DBE/MBE/WBE within 30 days of the change. Failure to notify OMWESB may result in denial/decertification.

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

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0040; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0050

Directory

The OMWESB shall maintain a state-wide unified directory of certified firms as follows:

(1) Certified firms shall use the current business name as registered with the Secretary of State Corporation Division for the OMWESB directory (sole proprietorships not registered with the Secretary of State Corporation Division shall use the name listed on their business license), and will use no other name in contracting business. An Assumed Business Name may be used for contracting purposes, but only if it is written in conjunction with the registered business name.

(2) The directory will be maintained in an electronic format and available on-line. It shall indicate the certification status of each firm: DBE, MBE, WBE and/or ESB. The directory information shall include firm's telephone/fax numbers and mailing addresses. The directory shall also list the firm's capabilities.

(3) The OMWESB shall update the directory on a quarterly basis, with certifications, recertifications, change of business address, phone

ADMINISTRATIVE RULES

number, etc. It is the responsibility of the applicant to assure that OMWESB has a current address and phone number.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0050; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0060

Recertification

(1) Certification as a DBE/MBE/WBE is valid for three years from the date of certification.

(2) A recertification notice shall be sent to certified DBE/MBE/WBEs approximately two months prior to expiration of the current certification. The DBE/MBE/WBE shall promptly return the recertification application along with any requested documentation (by-law amendments, evidence of changes in ownership, etc). The signed and notarized recertification application shall be reviewed by the OMWESB to determine continued eligibility. An on-site investigation may be conducted to verify information submitted to the OMWESB. It is the responsibility of the DBE/MBE/WBE to provide the information deemed necessary by the OMWESB to ascertain eligibility for recertification.

(3) Failure to return the completed recertification application by the expiration date shall lead to administrative closure. Recertification is not automatic. The DBE/MBE/WBE must demonstrate that their business currently meets the qualifications as listed in this chapter.

(4) An affidavit of "no change" will be sent to DBE firms annually approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous years and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified. MBE and WBE firms are exempt from this requirement.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0060; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0080

Third Party Complaints

Third party complaints regarding certification of DBE/MBE/WBEs may be submitted to the OMWESB and will be processed according to the following procedure:

(1) Any individual, firm or agency who believes that an applicant certified as a DBE/MBE/WBE does not qualify under the standards of eligibility for certification may file a third party complaint with the OMWESB.

(2) The third party complaint must be submitted to the OMWESB in writing, and must set forth facts which indicate that the DBE/MBE/WBE is not eligible, along with copies of any supporting documents the complainant may have. Facts should be described in as much detail as possible.

(3) The complainant must sign the third party complaint and give an address and telephone number where complainant may be reached during the investigation. In responding to requests for information concerning any aspect of the DBE, MBE, or WBE programs, OMWESB complies with provisions of the Federal Freedom of Information and Privacy Acts and the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the DBE, MBE, WBE program release of which is not prohibited by federal or state law. OMWESB may maintain the identity of complainants confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

(5) The OMWESB will investigate each third party complaint as promptly as resources allow. If preliminary investigative results show good cause for in-depth investigation, The OMWESB will notify the DBE/MBE/WBE of the third party complaint by certified mail. The DBE/MBE/WBE shall cooperate fully in the OMWESB's investigation.

(6) After the investigation is completed, the OMWESB shall issue a written decision, either a rejection of the third party complaint or a Notice of Intent to Decertify. The written decision shall be mailed to the DBE/MBE/WBE involved and to the complainant. No DBE/MBE/WBE will be decertified based on a third party complaint without first having an opportunity to respond to OMWESB regarding the complaint. DBE firms

may request a contested case hearing and/or appeal directly to USDOT as set out in OAR 445-050-0070. If an MBE/WBE receives the notice of intent to decertify, the MBE/WBE may request a contested case hearing as set out in 445-050-0075.

(7) If the decision of the OMWESB is to continue certification of the DBE, the complainant may submit a complaint to the Secretary of USDOT.

(8) Information received about an applicant prior to the initial certification being made will not be considered a third party complaint, but will be considered in the investigation of the application for certification.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0080; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0090

Challenges

(1) Any third party may challenge a Socially and Economically Disadvantaged Individual if the individual is an owner of a business certified or seeking certification as a DBE, MBE, or WBE. The challenge shall be made in writing to the OMWESB.

(2) Within the letter, the challenging party shall include all information available that is relevant to a determination of whether the challenged party is, in fact, a Socially and Economically Disadvantaged Individual.

(3) The OMWESB shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is, in fact, not a Socially and Economically Disadvantaged Individual:

(a) If the OMWESB determines that there is no reason to believe that the challenged party is not a Socially and Economically Disadvantaged Individual, the OMWESB shall so inform the challenging party in writing;

(b) If the OMWESB determines that there is reason to believe that the challenged party is not a Socially and Economically Disadvantaged Individual, the OMWESB shall begin a proceeding, as set out below, to analyze this determination;

(c) The OMWESB shall notify the challenged party in writing that his/her status as a Socially and Economically Disadvantaged Individual has been challenged;

(d) The notice shall summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the OMWESB (within a reasonable period specified by the OMWESB) information sufficient to permit the OMWESB to evaluate his/her status as a Socially and Economically Disadvantaged Individual;

(e) The OMWESB shall evaluate the information available to it and make a proposed determination of whether the challenged party is a Socially and Economically Disadvantaged Individual. The OMWESB shall notify both parties of this proposed determination in writing, setting forth the reasons for this determination;

(f) During the pendency of a challenge under this rule, the presumption that the challenged party is a Socially and Economically Disadvantaged Individual shall remain in effect.

(4) After the investigation is completed, the OMWESB shall issue a written decision, either a rejection of the third party challenge, Notice of Intent to Decertify or Denial. The written decision shall be mailed to the DBE, MBE or WBE involved and to the complainant. No firm will be decertified or denied certification based on a third party challenge without first having an opportunity to respond to OMWESB regarding the complaint.

(5) DBE firms may appeal the final determination of OMWESB, under subsection (3)(e) of this rule, and request a contested case hearing and/or appeal directly to USDOT as set out in OAR 445-050-0070 and in accordance with 49 CFR 26. If an MBE/WBE receives the Notice of Intent to Decertify, the MBE/WBE may request a contested case hearing as set out in 445-050-0075.

(6) In responding to requests for information concerning any aspect of the DBE, MBE, or WBE programs, OMWESB complies with provisions of the Federal Freedom of Information and Privacy Acts and the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the DBE, MBE, WBE program release of which is not prohibited by federal or state law. OMWESB may maintain the identity of complainants confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may

ADMINISTRATIVE RULES

result in the closure of the investigation or dismissal of the proceeding or hearing.

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

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0090; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0155

Complaints

(1) Complaints regarding certification of an ESB may be submitted to the OMWESB and will be processed according to the following procedure:

(2) Any individual, firm or agency who believes that an applicant certified as an ESB does not qualify under the standards of eligibility for certification may file a complaint with the OMWESB Manager.

(3) The complaint must be submitted to the OMWESB Manager, must be in writing, and must set forth facts which indicate that the ESB is not eligible, along with copies of any supporting documents the complainant may have. Facts should be described in as much detail as possible.

(4) The complainant must sign the complaint and give an address and telephone number where he or she may be reached during the investigation.

(5) The OMWESB will investigate each complaint as promptly as resources allow. The ESB shall cooperate fully in the OMWESB's investigation. The OMWESB will notify the ESB of the complaint by certified mail.

(6) After the investigation is completed, the OMWESB shall either issue a written decision to the ESB and the complainant, stating that there are no grounds for decertification or the OMWESB shall provide a Notice of Intent to decertify in accordance with OAR 445-050-0145.

(7) In responding to complaints or requests for information concerning any aspect of the ESB program, OMWESB complies with provisions of the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the ESB program release of which is not prohibited by state law.

(a) Notwithstanding the provisions of paragraph (7) of this section, the identity of complainants may be kept confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0155; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

Adm. Order No.: OSHA 8-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 437-003-1754

Rules Amended: 437-003-0001

Rules Repealed: 437-003-0754, 437-003-1760

Subject: The Department of Consumer and Business Services was directed to change its steel erection rules by the 2003 Legislature's House Bill 3010, which amended ORS 654.035. OR-OSHA can not require the use of fall protection by workers engaged in steel erection at heights lower than the heights at which fall protection relating to steel erection is required by federal regulation. Oregon OSHA adopted, amended, and repealed rules in Division 3/R, Construction/Steel Erection to comply with this ORS amendment.

The only comments received during the public hearing and open comment period were favorable to these amendments.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-003-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR

1926, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A — General

(a) 29 CFR 1926.1 Purpose and Scope, published 2/9/79, Federal Register (FR), vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections — right of entry, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(2) Subdivision B — General Interpretations

(a) 29 CFR 1926.10 Scope of subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C — General Safety And Health Provisions

(a) 29 CFR 1926.20 General safety and health provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.21 Safety training and education, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)

(d) 29 CFR 1926.23 First aid and medical attention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 Incorporation by reference, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249; 6/18/98, FR vol. 63, no. 117, p. 33468.

(m) 29 CFR 1926.32 Definitions, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D — Occupational Health And Environmental Controls

(a) 29 CFR 1926.50 Medical services and first aid, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

ADMINISTRATIVE RULES

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/17/86, FR vol. 51, p. 37007; 12/4/87, FR vol. 52, p. 46312; 11/4/96, FR vol. 61, no. 214, p. 56856; 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35099; 3/7/96, FR vol. 61, no. 46, p. 9250; 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 8/24/87, FR vol. 52, p. 31852; amended 12/4/87, FR vol. 52, 46075; 4/27/88, FR vol. 53, no. 81, pp. 15033-15035; stay lifted on 2/17/89, FR vol. 54, p. 6886; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 8/10/92, FR vol. 57, no. 154, pp. 35681-35695; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1296.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 7/19/94, FR vol. 59, no. 137, pp. 36700; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 5/4/93, FR vol. 58, no. 84, pp. 26626-26649; 1/8/98, FR vol. 63, no. 5, p. 1296.

NOTE: Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

NOTE: Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E — Personal Protective And Life Saving Equipment

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 6/30/93, Federal Register, vol. 58, p. 35152.

(b) 29 CFR 1926.100 Head protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.101 Hearing protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 1/8/98, FR vol. 63, no. 5, p. 1297.

NOTE: 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F — Fire Protection And Prevention

(a) 29 CFR 1926.150 Fire protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469; 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G — Signs, Signals, And Barricades

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H — Materials Handling, Storage, Use And Disposal

(a) 29 CFR 1926.250 General requirements for storage, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729; 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I — Tools — Hand And Power

(a) 29 CFR 1926.300 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35076; 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

(10) Subdivision J — Welding And Cutting

(a) 29 CFR 1926.350 Gas welding and cutting, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(b) 29 CFR 1926.351 Arc welding and cutting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K — Electrical

(a) 29 CFR 1926.400 Introduction, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved)

(c) 29 CFR 1926.402 Applicability, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved)

(k) 29 CFR 1926.415 (Reserved)

ADMINISTRATIVE RULES

- (l) 29 CFR 1926.416 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35179; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41738.
- (m) 29 CFR 1926.417 Lockout and tagging of circuits, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35181; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41739.
- (n) 29 CFR 1926.418 (Reserved)
- (o) 29 CFR 1926.430 (Reserved)
- (p) 29 CFR 1926.431 Maintenance of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (q) 29 CFR 1926.432 Environmental deterioration of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved)
- (s) 29 CFR 1926.441 Battery locations and battery charging, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved)
- (u) 29 CFR 1926.449 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (12) Subdivision L — Scaffolding
- (a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/30/96, FR vol. 61, no. 170, p. 46104.
- (b) 29 CFR 1926.451 General requirements, published 8/30/96, FR vol. 61, no. 170, p. 46107; 11/25/96, FR vol. 61, no. 228, p. 59831.
- (c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.
- (d) 29 CFR 1926.453 Aerial lifts, published 8/30/96, FR vol. 61, no. 170, p. 46116; 11/25/96, FR vol. 61, no. 228, p. 59832.
- (e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (j) Appendix E to Subpart L Drawing and illustrations, published 8/30/96, FR vol. 61, no. 170, p. 46122; 11/25/96, FR vol. 61, no. 228, p. 59832.
- (13) Subdivision M — Fall Protection
- (a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart. Amended 8/9/94, FR vol. 59, no. 152, p. 40730-40731; 1/18/01, FR vol. 66, no. 12, p. 5265; 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02.
- (b) 29 CFR 1926.501 Duty to have fall protection. Amended 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended 2/5/01 (Oregon Exceptions); amended with AO 6-2002, f. and ef. 7/19/02.
- (c) 29 CFR 1926.502 Fall protection systems criteria and practices. Amended 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.
- (d) 29 CFR 1926.503 Training requirements. Amended 8/9/94, FR vol. 59, no. 152, p. 40738; REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.
- (e) Appendix A to Subpart M Determining Roof Widths, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended 8/9/94, FR vol. 59, no. 152, p. 40738-40742.
- (f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.
- (g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.
- (h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.
- (14) Subdivision N — Cranes, Derricks, Hoists, Elevators, And Conveyors
- (a) 29 CFR 1926.550 Cranes and derricks, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 4/6/82, FR vol. 47, p. 14706; 8/2/88, FR vol. 53, p. 29139; 4/18/89, FR vol. 54, no. 73, p. 15405; 8/9/94, FR vol. 59, no. 152, p. 40730; 6/30/93, FR vol. 58, no. 124, p. 35183.
- (b) 29 CFR 1926.551 Helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.553 Base-mounted drum hoist, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.554 Overhead hoists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.555 Conveyors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (15) Subdivision O — Motor Vehicles, Mechanized Equipment, And Marine Operations
- (a) 29 CFR 1926.600 Equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183.
- (b) 29 CFR 1926.601 Motor vehicles, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.602 Material handling equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183; 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.
- (d) 29 CFR 1926.603 Pile driving equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.604 Site clearing, published 6/24/74, FR vol. 39, p. 22801; amended 7/22/77, FR vol. 42, p. 37674.
- (f) 29 CFR 1926.605 Marine operations and equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.606 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (16) Subdivision P — Excavations
- (a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.
- (b) 29 CFR 1926.651 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45960-45961; 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.652 Requirements for protective systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.
- (d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.
- (17) Subdivision Q — Concrete And Masonry Construction
- (a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 10/18/90, FR vol. 55, no. 202, p. 42326.
- (b) 29 CFR 1926.701 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.702 Requirements for equipment and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612.
- (d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.
- (e) 29 CFR 1926.704 Requirements for precast concrete, published 6/16/88, FR vol. 53, p. 22612; amended 10/5/89, FR vol. 54, no. 192, p. 41088.
- (f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 6/16/88, FR vol. 53, p. 22612; amended 10/18/90, FR vol. 55, no. 202, p. 42326.
- (g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.
- (h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.
- (18) Subdivision R — Steel Erection
- (a) 29 CFR 1926.750 Scope, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (b) 29 CFR 1926.751 Definitions, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, 1/1/04.
- (c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

ADMINISTRATIVE RULES

- (d) 29 CFR 1926.753 Hoisting and rigging, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (e) 29 CFR 1926.754 Structural steel assembly, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (f) 29 CFR 1926.755 Column anchorage, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (g) 29 CFR 1926.756 Beams and columns, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (h) 29 CFR 1926.757 Open web steel joists, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (i) 29 CFR 1926.758 Systems-engineered metal buildings, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (j) 29 CFR 1926.759 Falling object protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (k) 29 CFR 1926.760 Fall protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (l) 29 CFR 1926.761 Training, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Non-Mandatory Guidelines for Complying with §1926.752(e), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (n) Appendix B to Subpart R Acceptable test methods for testing slip-resistance of walking/working surfaces: Non-Mandatory Guidelines for Complying with §1926.754(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (o) Appendix C to Subpart R Illustrations of bridging terminus points: Non-Mandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Non-Mandatory Guidelines for Complying with §1926.760(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (q) Appendix E to Subpart R Training: Non-Mandatory Guidelines for Complying with §1926.761, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (r) Appendix F to Subpart R Perimeter columns: Non-Mandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Non-Mandatory Guidelines for Complying with §1926.760(d), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.
- (t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with §1926.756(c)(1), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.
- (19) Subdivision S — Underground Construction, Caissons, Cofferdams, And Compressed Air
- (a) 29 CFR 1926.800 Tunnels and shafts, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940. Underground Construction, published 6/2/89, FR vol. 54, no. 105, p. 23824; 1/8/98, FR vol. 63, no. 5, p. 1297.
- (b) 29 CFR 1926.801 Caissons, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.802 Cofferdams, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.803 Compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.
- (e) 29 CFR 1926.804 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (f) Appendix A to Subpart S Decompression Tables, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (20) Subdivision T — Demolition
- (a) 29 CFR 1926.850 Preparatory operations, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.852 Chutes, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.853 Removal of materials through floor openings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.855 Manual removal of floors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (h) 29 CFR 1926.857 Storage, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.858 Removal of steel construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.859 Mechanical demolition, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.860 Selective demolition by explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (21) Subdivision U — Blasting And Use Of Explosives
- (a) 29 CFR 1926.900 General provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.901 Blaster qualifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.902 Surface transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.
- (d) 29 CFR 1926.903 Underground transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.
- (f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184.
- (g) 29 CFR 1926.906 Initiation of explosive charges — electric blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.
- (h) 29 CFR 1926.907 Use of safety fuse, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (i) 29 CFR 1926.908 Use of detonating cord, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (j) 29 CFR 1926.909 Firing the blast, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (k) 29 CFR 1926.910 Inspection after blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (l) 29 CFR 1926.911 Misfires, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (m) 29 CFR 1926.912 Underwater blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (o) 29 CFR 1926.914 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.
- (22) Subdivision V — Power Transmission And Distribution
- (a) 29 CFR 1926.950 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (b) 29 CFR 1926.951 Tools and protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40730.
- (c) 29 CFR 1926.952 Mechanical equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

ADMINISTRATIVE RULES

(d) 29 CFR 1926.953 Material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.954 Grounding for protection of employees, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.955 Overhead lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.956 Underground lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.957 Construction in energized substations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.958 External load helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.960 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(23) Subdivision W — Rollover Protective Structures: Overhead Protection

(a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(24) Subdivision X — Stairways And Ladders

(a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 11/14/90, Federal Register, vol. 55, no. 220, p. 47687; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 6/30/93, FR vol. 58, no. 124, p. 35184.

(b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.

(c) 29 CFR 1926.1052 Stairways, published 11/14/90, FR vol. 55, no. 220, p. 47688; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 2/7/91, FR vol. 56, no. 26, p. 5061; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(d) 29 CFR 1926.1053 Ladders, published 11/14/90, FR vol. 55, no. 220, p. 47689; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(e) 29 CFR 1926.1054 (Reserved)

(f) 29 CFR 1926.1055 (Reserved)

(g) 29 CFR 1926.1056 (Reserved)

(h) 29 CFR 1926.1057 (Reserved)

(i) 29 CFR 1926.1058 (Reserved)

(j) 29 CFR 1926.1059 (Reserved)

(k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.

(25) Subdivision Z — Toxic And Hazardous Substances

(a) 29 CFR 1926.1101 Asbestos, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/20/86, FR vol. 51, p. 22612; 10/17/86, FR vol. 52, p. 17756; 7/20/88, FR vol. 53, no. 138, p. 27346; 9/14/88, FR vol. 53, p. 35627; 9/23/88, FR vol. 53, no. 185, p. 37080; 7/21/89, FR vol. 54, no. 139, p. 30705, 12/20/89, FR vol. 54, no. 243, pp. 52027-52028; 2/5/90, FR vol. 55, no. 24, p. 3792; 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, pp. 24330-1; 6/30/92, FR vol. 57, no. 126, p. 29119; 8/10/94, FR vol. 59, no. 153, pp. 41131-62; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, no. 165, p. 43454; 1/8/98, FR vol. 63, no. 5, p. 1298; 4/23/98, FR vol. 63, no. 78, p. 20099; 6/29/98, FR vol. 63, no. 124, p. 35137.

(b) 29 CFR 1926.1127 Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42453-42463; amended 4/23/93, FR vol. 58, no. 77, p. 21778; 1/3/94, FR vol. 59, no. 1, p. 215; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1298.

(c) 29 CFR 1926.1152 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.

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

Stats. Implemented: ORS 654.001-654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04

437-003-1754

Roof and floor holes and openings

Roof and floor holes and openings shall be decked over. Where large size configuration or other structural design does not allow openings to be decked over (such as elevator shafts, stairwells, etc.) employees shall be protected by covers or guardrail systems erected around such openings as soon as the openings are created.

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

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 8-2003, f. 12-30-03 cert. ef. 1-1-04

Department of Corrections

Chapter 291

Adm. Order No.: DOC 1-2004(Temp)

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04 thru 6-12-04

Notice Publication Date:

Rules Adopted: 291-062-0100, 291-062-0110, 291-062-0120, 291-062-0130, 291-062-0140, 291-062-0150, 291-062-0160

Rules Suspended: 291-062-0010, 291-062-0020, 291-062-0030, 291-062-0040, 291-062-0050, 291-062-0060, 291-062-0070, 291-062-0080

Subject: The 2003 Oregon Legislature enacted a law that requires the department to establish an alternative incarceration program that includes intensive addiction intervention and treatment. These rule amendments are necessary for the establishment of the criteria for inmate eligibility and selection for participation in the program, as well as suspension and removal. The eligibility and selection requirements have been merged with the requirements for participation in another incarceration program already established within the department.

Rules Coordinator: Carolyn Schnoor—(503) 945-0933

291-062-0010

Authority, Purpose and Policy

(1) Authority: The authority for the rule is granted to the Director of the Department of Corrections in accordance with 1997 OR Laws, Chapters 63, 313 and 852, and ORS 179.040, 421.500 to 421.512, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of the rule is to establish a special alternative incarceration program stressing a highly structured and regimented routine to promote offender rehabilitation, and to establish Department of Corrections policy and procedures for the program's operation and management, as directed in ORS 421.500 to 421.512.

(3) Policy: It is the policy of the Department of Corrections to promote offender rehabilitation during incarceration to reduce the risk of continuing criminal conduct when the offender is returned to the community.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0020

Definitions

(1) Facility Superintendent: The functional unit manager of a Department of Corrections facility designated by the Department's Director to provide the structured institutional component of the Oregon SUMMIT

ADMINISTRATIVE RULES

Program, and is responsible for delivery of program services or coordination of program operations.

(2) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(3) Oregon SUMMIT Program: A highly structured corrections program based on a military basic training model that involves intensive mental and physical training and substance abuse treatment. SUMMIT is an acronym for Success Using Motivation, Morale, Intensity and Treatment. The program includes two components: a structured institution program, and a period of short-term transitional leave. The structured institution program component will be provided at one or more Department of Corrections facilities as designated by the Director. Upon successfully completing to the Department's satisfaction all Oregon SUMMIT Program requirements as directed while participating in the structured institution program and, when directed by the facility superintendent, in the short-term transitional leave components of the program, an inmate shall be released into the community on post-prison supervision.

(4) Short-term Transitional Leave: Leave for a period not to exceed 90 days preceding an established release date for the purpose of securing appropriate transitional support, as authorized by 1997 Or Laws, Chapter 63, and the Department's rule on Short Term Transitional Leaves, Emergency Leaves and Supervised Trips (OAR 291-063).

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0030

Inmate Eligibility

(1) The Department will identify inmates eligible to participate in the Oregon SUMMIT Program. To be eligible to participate in the program an inmate:

(a) Must be sentenced to the legal and physical custody of the Oregon Department of Corrections and be subject to a term of post-prison supervision upon satisfaction of a term of incarceration in a Department of Corrections facility;

(b) Must be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Must be assigned minimum custody status in accordance with the Department's rule on **Classification (Inmate)** (OAR 291-104) and have no more than 36 months to serve at the beginning of the platoon cycle.

(2) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if ever convicted of a crime described in ORS 163.095, 163.115, 163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.525, 164.325, or 164.415. Current or previous convictions of attempt, solicitation or conspiracy to commit any of these listed or similar (i.e., other states) crimes, will also disqualify an inmate for program participation. These disqualifying felonies and misdemeanors are: Aggravated Murder, Murder, Manslaughter I, Kidnapping I, Rape III, Rape II, Rape I, Sodomy III, Sodomy II, Sodomy I, Unlawful Sexual Penetration II, Unlawful Sexual Penetration I, Sexual Abuse III, Sexual Abuse II, Sexual Abuse I, Contributing to the Sexual Delinquency of a Minor, Incest, Arson I, Robbery I. There is a single exception that applies only to an inmate's "instant" offense (the offense resulting in the inmate's current incarceration) of attempt, solicitation, or conspiracy to commit Robbery I or Kidnapping I. This exception would be if the sentencing judge in that offense specifically requests the department, in writing, to consider the inmate candidate's application. Any past conviction of attempt, solicitation, or conspiracy to commit Robbery I or Kidnapping I are permanently disqualified from participation.

(3) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if the inmate is subject to ORS 137.635 (Ballot Measure 4) or ORS 161.610 (gun minimum sentence).

(4) An inmate is **not** eligible to participate in the Oregon SUMMIT Program if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the beginning of the platoon cycle, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the beginning of the platoon cycle.

(b) Has non-sentencing guidelines prison terms, unresolved criminal prosecutions, consecutive county jail terms, or any other circumstance which would conflict with his/her release from prison upon satisfactory completion of the SUMMIT program.

(c) Has a current Immigration and Naturalization Service (INS) detainer which the facility superintendent determines to constitute a risk for escape from custody.

(d) Is currently assigned to special security housing for reasons of protective custody, or the inmate's assignment to the program is otherwise determined by Department officials to pose a threat to the safe, secure and orderly operation and management of the program, including the safety of Department staff and inmates.

(e) Has less than ten months to serve from the first day of the program's next cycle, unless, as determined by the facility superintendent, there is sufficient bed space available to accommodate these applicants. In no case will an applicant be accepted who has less than eight months to serve from the first day of the program's next cycle.

(f) After April 1, 1995, commits and is convicted of Manslaughter II (ORS 163.125), Assault I (ORS 163.185), Assault II (ORS 163.175), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405).

(g) On or after October 4, 1997, commits and is convicted of Using a Child in a Display of Sexually Explicit Conduct (ORS 163.670) or Compelling Prostitution (ORS 167.017).

(h) On or after April 1, 1995, commits and is convicted of Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405), unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a lesser sentence pursuant to 1997 Or Laws, Chapter 852.

(5) No inmate who is convicted of a crime committed on or after December 5, 1996, may be considered for participation in the Oregon SUMMIT Program except upon order of the sentencing court appearing in the judgment authorizing an alternative incarceration program.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030, & 423.075
Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; DOC 19-1999(Temp), f. & cert. ef. 10-28-99 thru 4-25-00; DOC 8-2000, f. & cert. ef. 4-14-00; DOC 6-2003(Temp), f. & cert. ef. 2-21-03 thru 8-20-03; DOC 10-2003, f. & cert. ef. 7-7-03; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0040

Inmate Selection

(1) The Department may, in its discretion, accept eligible inmates into the Oregon SUMMIT Program when the Department determines that the inmate's participation in the program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the Department.

(2) An inmate will not be accepted into the program unless the inmate submits a written request to participate:

(a) The request must contain a statement signed by the inmate applicant providing that he/she:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the program description provided by the Department and agrees to comply with each of the requirements of the program.

(b) Otherwise eligible inmate applicants with a physical and/or mental disability will be evaluated individually to determine whether they may successfully participate in the fundamental components of Oregon SUMMIT Program;

(c) The Department shall make the final determination regarding an inmate's physical or mental ability to withstand the rigors of the program.

(3) Program slots will be offered to eligible inmates whose history is reflected by the greatest total point value on the Selection Priority Scale, attached as Attachment 1. A total score is obtained by adding the point value obtained for each of the five criteria in the scale. If additional selection criteria are required to select for participation inmates whose history is reflected by the same numerical point value(s) on the Selection Priority Scale, inmates with the least time served on their current commitment will be the first offered the opportunity to participate in the Oregon SUMMIT Program.

(4) Applications for participation must be received by the designated Oregon SUMMIT Program facility's superintendent's office not less than 20 business days prior to the beginning of the next program cycle.

(5) Inmate applicants whose current offense is Manslaughter II (prior to April 1, 1995) and Negligent Homicide will receive a special review. The facility superintendent will assure that the judge and district attorney involved in these cases is contacted in writing advising that the inmate is being considered for the SUMMIT program which, if successfully completed, will provide for an earlier than expected release from prison. The judge and district attorney will be given no less than 30 days from the date of mailing to make their comments and recommendations. The superin-

ADMINISTRATIVE RULES

tendent, in consultation with the Assistant Director for Institutions, will make the final selection decision.

(6) The facility superintendent may, in his/her discretion, contact and request comments and recommendations from the sentencing judge and district attorney regarding the application of any inmate. Comments and recommendations from judges, district attorneys, victims, and others will be considered by the superintendent in making the final selection decision.

[ED. NOTE: Attachments referenced in this rule are available from the agency.]

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0050

Removal From the Program

(1) The Department may, in its discretion, remove or suspend an inmate from the Oregon SUMMIT Program, and may reassign the inmate to another Department of Corrections facility to serve the balance of the inmate's court-imposed incarceration term(s), for administrative or disciplinary reasons. A decision to remove or suspend an inmate from the program will be made in consultation with a committee appointed by the facility superintendent (superintendent's committee) to review the performance of inmates participating in the Oregon SUMMIT Program.

(2) Administrative Removal/Suspension:

(a) The facility superintendent may, in his/her discretion, immediately remove or suspend an inmate from the program and reassign the inmate to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An inmate who is not available to participate substantially in the program (e.g., illness, court appearance(s), disciplinary segregation, etc.) for 30 days or more will be removed from the program.

(c) Any change in status that would cause the inmate to be ineligible to continue participating in the program as described in OAR 291-062-0030, shall result in the inmate's immediate removal from the program.

(3) Disciplinary Removal/Suspension: An inmate who commits a major disciplinary rule violation may be removed from the program and transferred to another Department of Corrections facility at the discretion of the facility superintendent, after a hearing in accordance with procedures provided in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(4) Voluntary Removal: An inmate may elect to remove himself/herself from the Oregon SUMMIT Program; however, to do so the inmate must first meet personally with the facility superintendent or designee to explain the reasons for the decision, and sign a document requesting removal from the program.

(5) Discretionary Recycle/Restart: An inmate who has been removed or suspended from the Oregon SUMMIT Program for administrative or disciplinary reason(s) pursuant to OAR 291-062-0050(2)(a) and (b), and (3), or who has removed himself/herself voluntarily from the program pursuant to OAR 291-062-0050(4), may re-apply with the facility superintendent for acceptance back into the program. The facility superintendent may, in his/her discretion, accept the inmate back into the program, notwithstanding the priority selection criteria set forth in OAR 291-062-0040(3), and assign the inmate back into a platoon with a later graduation date (recycle), or permit the inmate to begin the entire program over again (restart).

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0060

Program Management

(1) This special alternative incarceration program stresses a highly structured and regimented routine. The program shall:

(a) Be based on a military basic training model that includes extensive discipline, physical work, physical exercise and military drill;

(b) Provide for cognitive restructuring;

(c) Include a drug and alcohol component;

(d) Include a literacy and education component;

(e) Include an anger and stress management component;

(f) Include a community re-integration skills course; and

(g) Be no longer than 270 days duration.

(2) Inmates in the SUMMIT program will be very active 16 hours per day, seven days per week. It is essential that adequate calories, as well as nutrition, be given to fuel this highly demanding routine. Therefore, the facility superintendent is authorized to add to the basic centralized, cyclical menu to meet the needs of inmates at a higher activity level.

(3) An inmate who successfully completes to the Department's satisfaction all of the requirements of the structured institution program may be released directly to post-prison supervision or, at the discretion of the facility superintendent, the inmate may be required to participate and successfully complete the short-term transitional leave component of the Oregon SUMMIT Program prior to release to post-prison supervision.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075

Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0070

Oregon SUMMIT Prison Management

(1) The overall environment of the Oregon SUMMIT Program is austere and based upon strict military discipline.

(2) Consistent with the goals of the SUMMIT program, which includes being drug free and taking personal responsibility for destructive behavior, SUMMIT participants will not be permitted the use of tobacco products.

(3) Possession of a High School Diploma or GED is a condition of successful program completion. This requirement may be waived at the superintendent's discretion.

(4) To the extent that other Department of Corrections rules and procedures may conflict with provisions in this rule, such rules are inapplicable to the Oregon SUMMIT Program and/or are modified as provided in this rule to reflect the purposes of the program and the relatively short period of confinement:

(a) Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063):

(A) An inmate that completes to the Department's satisfaction all of the requirements of the structured institution program may be released into the community on a short-term transitional leave. Upon successfully conforming to directed activities while participating in the short-term transitional leave component of the program, an inmate shall be released into the community on post-prison supervision.

(B) Because SUMMIT participants who successfully complete the program will effectively receive a reduction in their incarceration terms, they will be held to a higher standard of behavior on transitional leave than non-SUMMIT inmates. Therefore, OAR 291-063 is modified with respect to SUMMIT participants to provide that:

(i) Violations that would be considered serious enough to warrant revocation will include, in the judgment of the supervising officer, the SUMMIT inmate's demonstration that he/she does not warrant an early release from prison because he/she has failed to demonstrate one or more of the following: respect for authority, positive effort, cooperation, following instructions, accepting criticism, program progress, neatness/cleanliness, and positive attitude.

(ii) If the supervising officer believes that a SUMMIT inmate is in violation of the terms and conditions of his/her transitional leave established by the facility superintendent, the officer may cause the inmate to be arrested and returned to the physical custody of the Oregon Department of Corrections. An in-custody hearing will be conducted to determine whether the inmate violated the terms and conditions of his/her transitional leave in accordance with the rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips, (OAR 291-063). The inmate's participation in the Oregon SUMMIT Program will be immediately suspended pending the outcome of the hearing.

(iii) If the inmate is found in violation of the terms and conditions of his/her transitional leave, the case will be reviewed by the superintendent's committee to recommend whether the inmate should be removed from, continued in, restarted, or recycled in the Oregon SUMMIT Program. The facility superintendent will review the recommendation and, at his/her discretion, issue a written order to either remove, continue, approve a new transitional leave, recycle or restart the inmate. If the facility superintendent permits the inmate to continue in the Oregon SUMMIT Program, the facility superintendent may, in his/her discretion, revoke the inmate's transitional leave and approve a new transitional leave of up to 90 days without regard to the length of the previous transitional leave.

(iv) An inmate who is removed or suspended from the Oregon SUMMIT Program may be re-assigned to another Department of Corrections facility to serve the balance of their entire court-imposed incarceration term(s).

(b) Hygiene, Grooming and Sanitation (Inmate) (OAR 291-123): Inmates enrolled in the SUMMIT program will be groomed in a manner consistent with military boot camps. Therefore, OAR 291-123 (personal hygiene) is modified with respect to SUMMIT participants as follows:

(A) Male SUMMIT inmates shall maintain crew-type hair cuts, approximately 1/8" to 1" in length and completely trimmed around the ears,

ADMINISTRATIVE RULES

and keep their faces clean shaven. Female SUMMIT inmates shall maintain short hair cuts, not be exceed 2" on top and trimmed to the hair line on the neck and around the ears. Hair cuts shall be given to all SUMMIT inmates on a regular basis. During the final 30 days of the structured institution program, hair length and style will be at the option of the inmate.

(B) SUMMIT inmates will not be permitted to possess or wear jewelry with the exception of a plain, smooth wedding band, without stones or protrusions, religious pendant that must be worn out of sight, and a watch purchased through the canteen.

(c) Personal Property (Inmate) (OAR 291-117): Inmates participating in the SUMMIT program will not have time nor will they benefit by the distractions offered by entertainment equipment. Therefore, OAR 291-117 is modified with respect to SUMMIT participants as follows: SUMMIT inmates shall not be permitted to possess musical instruments, television, radios or radio/tape players. Inmates who are in possession of these items will surrender them to the institution staff for storage or to be shipped out at the inmate's option and expense.

(d) Release of Public Information (OAR 291-039): The SUMMIT program is of great interest to the citizens of Oregon. As a consequence of this interest, representatives of the media often visit the institution to film inmates participating in various phases of this program. It is in the public's interest for the media to be able to photograph inmates' participation in the program, which is often in large groups. Securing individual media release forms from large numbers of inmates for each group of reporters would be cumbersome and diminish the effectiveness of the media coverage of the program. Therefore, OAR 291-039 is modified with respect to SUMMIT participants to require, as a condition of participation in the SUMMIT program, that each inmate sign a media release form that will remain valid and in force for the duration of the inmate's participation in the program.

(5) Prison Term Modification (OAR 291-097): Inmates who begin the Oregon SUMMIT Program will be considered to be participating in their primary program plan. If the inmate fails to complete the program because of inadequate program performance, disciplinary reasons, or voluntary removal, that inmate will be considered as noncompliant with his/her primary program plan, and will not be granted earned time credit for programming during that review period.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 1-1995, f. 1-6-95, cert. ef. 1-9-95; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; DOC 8-2000, f. & cert. ef. 4-14-00; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0080

Oregon SUMMIT Prison Services and Activities

Items available to purchase from the canteen services will be only those items that support the program goals, such as personal hygiene products, boot polish, writing materials and approved religious articles. No food items will be sold.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: CD 6-1994, f. & cert. ef. 3-4-94; CD 18-1997(Temp), f. & cert. ef. 10-14-97; DOC 8-1998, f. 4-6-98, cert. ef. 4-7-98; Suspended by DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0100

Authority, Purpose and Policy

(1) Authority: The authority for these rules are granted to the Director of the Department of Corrections in accordance with 2003 Or Laws, Chapter 464 and ORS 179.040, 421.500 to 421.512, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish special alternative incarceration programs and establish department policy and procedures for the program's operation and management in accordance with ORS 421.500 to 421.512.

(3) Policy: It is the policy of the Department of Corrections to establish alternative incarcerations programs that promote inmate rehabilitation during incarceration and reduce the risk of continuing criminal conduct when the inmate is returned to the community.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0110

Definitions

(1) Alternative Incarceration Program: A highly structured corrections program that includes intensive interventions, rigorous personal responsibility and accountability, physical labor, and service to the community. The program includes two components — a structured institution program and a period of short-term transitional leave. The program provides 14 hours of highly structured and regimented routine every day for at least 270 days.

(2) Functional Unit Manager: The functional unit manager/superintendent of a Department of Corrections facility designated by the Director to provide an alternative incarceration program.

(3) Short-Term Transitional Leave: Leave for a period not to exceed 90 days preceding an established release date for the purpose of securing appropriate transitional support in accordance with ORS 421.400 and the department's rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063).

(4) Custody Cycle: The time period during which an offender begins incarceration with the Department of Corrections and/or is under the supervision of Community Corrections until discharge from all Department of Corrections and Community Corrections incarceration and supervision.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0120

General

The Department of Corrections has established alternative incarceration programs located in various facilities throughout the state. The programs include two components — a structured institution program and a period of structured short-term transitional leave. The institution program provides 14 hours of highly structured routine every day for at least 180 days. There are two types of alternative incarceration programs within the department. One type is loosely based on a military model of intervention. The other type includes intensive addiction intervention and treatment.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0130

Inmate Eligibility

(1) The department will identify inmates eligible to participate in alternative incarceration programs. To be eligible to participate in the program an inmate must:

(a) Be sentenced to the legal and physical custody of the department and be subject to a term of post-prison supervision upon satisfaction of a term of incarceration in a Department of Corrections facility;

(b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Be assigned minimum custody status in accordance with the department's rule on Classification (Inmate) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An inmate is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in ORS 163.095 (Aggravated Murder), 163.115 (Murder), 163.118 (Manslaughter I), 163.235 (Kidnapping I), 163.355 (Rape III), 163.365 (Rape II), 163.375 (Rape I), 163.385 (Sodomy III), 163.395 (Sodomy II), 163.405 (Sodomy I), 163.408 (Unlawful Sexual Penetration II), 163.411 (Unlawful Sexual Penetration I), 163.415 (Sexual Abuse III), 163.425 (Sexual Abuse II), 163.427 (Sexual Abuse I), 163.435 (Contributing to the Delinquency of a Minor), 163.525 (Incest), 164.325 (Arson I), or 164.415 (Robbery I).

(3) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 137.635.

(4) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under ORS 161.610 until the inmate completes the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(5) An inmate is not eligible to participate in alternative incarceration programs if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), unresolved criminal prosecutions, consecutive county jail terms, or any other circumstance that would conflict with his/her release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current Immigration and Naturalization Service Custom Enforcement (ICE) detainer that the functional unit manager determines to constitute a risk for escape from custody.

(d) Is currently assigned to special security housing for reasons of protective custody, or the inmate's assignment to the program is otherwise determined by department officials to pose a threat to the safe, secure and

ADMINISTRATIVE RULES

orderly operation and management of the program, including the safety of department staff and inmates.

(e) Has less than ten months to serve from the first day of program entry.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 421.168(1) and 144.108(3)(b).

(6) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provision of ORS 137.700 or 137.707 until completion of the mandatory minimum incarceration term. For crimes committed on or after December 5, 1996, the inmate is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(7) An inmate is not eligible to participate in alternative incarceration programs if the inmate, on or after April 1, 1995, commits and is convicted of Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon), Kidnapping II (ORS 163.225), or Robbery II (ORS 164.405), unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a lesser sentence pursuant to ORS 137.712 and (for crimes committed on or after December 5, 1996) only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(8) An inmate is not eligible to participate in alternative incarceration programs if the inmate on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court, notwithstanding ORS 137.700 and 137.707, has imposed a lesser sentence pursuant to ORS 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(9) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 161.725 or 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989. An inmate shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(10) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996, shall be eligible for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0140

Inmate Selection

(1) The department may, in its discretion, accept eligible inmates into alternative incarceration programs when the department determines that the inmate's participation in such a program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the department.

(2) An inmate will not be accepted into an alternative incarceration program unless the inmate submits a written request (CD 1425) to participate.

(a) The request must contain a statement signed by the inmate applicant providing that he/she:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the alternative incarceration program descriptions provided by the department and agrees to comply with each of the requirements.

(b) Otherwise eligible inmate applicants with a physical and/or mental disability will be evaluated individually to determine whether they may successfully participate in the fundamental components of an alternative incarceration program.

(c) The department shall make the final determination regarding an inmate's physical or mental ability to withstand the rigors of the program.

(3) The department's Research and Evaluation Unit will create prioritized lists for inmate placement into alternative incarceration programs based upon the inmate's assessment and eligibility. The prioritized lists will match inmate need with the level of program intensity. Inmate involvement with these programs is influenced by resource availability. The department will place as many eligible inmates as possible into these programs.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0150

Removal From an Alternative Incarceration Program

(1) The department may, in its discretion, remove or suspend an inmate from an alternative incarceration program, and may reassign the inmate to another Department of Corrections facility to serve the balance of the inmate's court-imposed incarceration term(s), for administrative or disciplinary reasons. A decision to remove or suspend an inmate from the program will be made in consultation with a committee appointed by the functional unit manager to review the performance of inmates participating in an alternative incarceration program.

(2) Administrative Removal/ Suspension:

(a) The functional unit manager may, in his/her discretion, immediately remove or suspend an inmate from the program and reassign the inmate to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An inmate who is not available to participate substantially in the program (e.g., illness, court appearance(s), disciplinary segregation, etc.) for 30 days or more will have his/her program participation suspended and be evaluated by the alternative incarceration program review committee to determine whether the inmate will be removed from the program or accepted back into the program at the program level deemed appropriate by the functional unit manager/designee.

(c) Any change in status that would cause the inmate to be ineligible to continue participating in the program as described in OAR 291-062-0130 (e.g., discovery of a detainer), shall result in a 30-day suspension. The inmate will have 30 days to resolve the eligibility status with the department. If the status remains unresolved, the inmate will be removed from the program.

(d) An inmate who is not making adequate program progress as determined by the functional unit manager/designee in accordance with established program standards may be suspended for 30 days from the program. During the 30-day suspension the inmate will be given an opportunity to come into compliance with established program standards. If the inmate comes into compliance, he/she will be placed at a program level deemed appropriate by the functional unit manager/designee. If the inmate fails to come into compliance, he/she will be removed from the program.

(3) Disciplinary Removal/Suspension: An inmate who commits a major disciplinary rule violation may be removed from the program and transferred to another Department of Corrections facility at the discretion of the functional unit manager, after a hearing in accordance with procedures provided in the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(4) Voluntary Removal: An inmate may elect to remove himself/herself from an alternative incarceration program; however, to do so the inmate must first meet personally with the functional unit manager or designee to explain the reasons for the decision, and sign a document requesting removal from the program. The inmate will be suspended for a period of 30 days. If after the 30-day suspension, the inmate elects to remain in the program, he/she will be placed at a program level deemed appropriate by the functional unit manager/designee. If the inmate still elects not to participate in the program after the 30-day suspension, he/she will be removed accordingly.

(5) Once an inmate has removed from one alternative incarceration program, he/she will not be allowed to participate in any other alternative incarceration program offered by the Department of Corrections during the same custody cycle.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

291-062-0160

Alternative Incarceration Program Prison Management

To the extent that other Department of Corrections rules may conflict with provisions in these rules (OAR 291-062-0100 to 291-062-0160), such rules are inapplicable to alternative incarceration programs and are modified as provided below to reflect the purposes of alternative incarceration programs and the relatively short period of confinement.

(1) Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063):

(a) An inmate that completes to the department's satisfaction all of the requirements of the structured institution program will be released into the community on short-term transitional leave. Upon successfully conforming to directed activities while participating in the short-term transitional leave component of the program, an inmate shall be released into the community on post-prison supervision.

(b) Because alternative incarceration program participants who successfully complete their program will effectively receive a reduction in their incarceration terms, they will be held to a higher standard of behavior on transitional leave than other inmates on short-term transitional leave.

ADMINISTRATIVE RULES

Therefore, OAR 291-063 is modified with respect to alternative incarceration program participants to provide that:

(A) Violations that would be considered serious enough to warrant revocation will include, in the judgment of the supervising officer, the inmate's demonstration that he/she does not warrant an early release from prison because he/she has failed to demonstrate one or more of the following: respect for authority, positive effort, cooperation, following instructions, accepting criticism, program progress, neatness/cleanliness, and positive attitude.

(B) If the supervising officer determines that an alternative incarceration program inmate is in violation of the terms and conditions of his/her transitional leave established by the functional unit manager/designee, sanctions may be imposed at the local level if:

(i) The supervising officer and the functional unit manager/designee determine that the violation can be appropriately addressed; and

(ii) The inmate admits the violation and accepts the sanction.

(C) A misconduct report shall be submitted any time a violation of short-term transitional may result in revocation of that leave. In such instances, it is the responsibility of the supervising officer to report the alleged violation in writing to the functional unit manager within five working days of the infraction. The functional unit manager/designee shall ensure that a misconduct report is submitted in accordance with the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105)

(2) Hygiene, Grooming and Sanitation (Inmate) (OAR 291-123), Personal Property (Inmate) (OAR 291-117): Canteen operations and purchases, food services and educational requirements for participants may be modified by those facilities where alternative incarceration programs are offered as a means of supporting program goals. Each facility may develop an internal procedure for staff outlining the applicable requirements and/or restrictions specific to these programs.

(3) Release of Public Information (OAR 291-039): Alternative incarceration programs are of great interest to the citizens of Oregon. As a consequence of this interest, representatives of the media may visit facilities with these programs to film inmates participating in various phases. It is in the public's interest for the media to be able to photograph inmates' participation in these programs, which is often in large groups. Securing individual media release forms from large numbers of inmates for each group of reporters would be cumbersome and diminish the effectiveness of the media coverage of these programs. Therefore, OAR 291-039 is modified with respect to alternative incarceration program participants to require, as a condition of participation, that each inmate sign a media release form that will remain valid and in force for the duration of the inmate's participation in the program.

(4) Mail (Inmate) (OAR 291-131): Inmates participating in an alternative incarceration program may not be allowed to correspond with other inmates participating in the same program, and/or may not be allowed to correspond with inmates housed in general population at the facility where the program is operating.

(5) Prison Term Modification (OAR 291-097): Inmates who begin an alternative incarceration program will be considered to be participating in their primary program plan. If the inmate fails to complete the program because of inadequate program performance, disciplinary reasons, or voluntary removal, that inmate will be considered as noncompliant with his/her primary program plan, and will not be granted earned time credit for programming during that review period.

Stat. Auth.: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.500-512, 423.020, 423.030 & 423.075
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 130-2003(Temp)

Filed with Sec. of State: 12-24-2003

Certified to be Effective: 12-24-03 thru 3-1-04

Notice Publication Date:

Rules Amended: 635-070-0000, 635-070-0010, 635-073-0000, 635-073-0060

Subject: Amend rule to change the boundary description for the Callahan Controlled Antlerless Elk Youth Hunt (224T3) and Callahan Controlled Antlerless Elk Hunt (224C). The boundary descriptions published in the 2003 Oregon Big Game Regulations are incorrect. The correct and intended boundary encompasses a larger area and would address significant elk damage occurring on the property of the cooperating landowner.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2003 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 "2003 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2003 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 2003 Oregon Big Game Regulations are amended to change the boundary description for Hunt 224C- Callahan on page 83. The new language can be found under 635-070-0010.

[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

635-070-0010

Controlled Coast Elk Rifle Hunts

(1) Hunt 224C- Hunt Name; Callahan:

(a) Bag Limit: one antlerless elk.

(b) Open Season: February 7-8, 14-15, 21-22, 28-29, 2004.

(c) Hunt Area: 10% public lands. 172 sq. miles. In unit 24, west of Roseburg as follows: beginning at junction of Callahan Rd (CTR 174) and BLM Rd 27-7-4.0; southwest on 27-7-4.0 to Reston Rim Rd (Weyerhaeuser 9540 & 28-8-3.0); south and west on 28-8-3.0 to 28-8-9.1; west on to Burnt Mt Rd (28-8-16.0); north and west on 28-8-16.0 to Burnt Ridge Rd (27-9-24.0); north on 27-9-24.0 to 26-9-8.0; north and west on 26-9-8.0 to Rd 5000 (Williams River Rd); west and north on 5000 to 4000 (Millicoma River Rd); west on 4000 to 1000 (Matson Cr Rd); north and east on 1000 to Loon Creek Road (CR 3); east and north on CR 3 to Soup Cr (CR 72 and 23-9-19.0); east on 23-9-19.0 to 23-9-4.0; south and east on 23-9-4.0 to 24-9-28.0; south and east on 24-9-28.0 to section 4 (1 mile east of Old Blue); south and east 1/2 mile on 24-9-28.0 to road 24-8-20.0 (Blue Access Rd 3606); south on 24-8-20.0 (becoming Bateman Rd at junction of Weyerhaeuser 2000 and 24-10-29.0) to 8420 road; southeast on 8420 to 8800; south and east on 8800 (25-8-1.0) to 8500; east and south on 8500 to 5340; southeast on 5340 to junction of CR 174 and 27-7-4.0 (point of beginning).

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

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

Hist.: FWC 37-1982, f. & ef. 6-25-82; FWC 28-1983, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 71-1985, f. & ef. 11-8-85; FWC 35-1986, f. & ef. 8-7-86; FWC 44-1987, f. & 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 128-1991(Temp), f. & cert. ef. 10-28-91; 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 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2003 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2003 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2003 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and

ADMINISTRATIVE RULES

controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the 2003 Oregon Big Game Regulations are amended to change the boundary description for Hunt 224T3 — Callahan on page 87. The new language can be found under 635-073-0060.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04

635-073-0060

Controlled Antlerless Elk Youth Hunts

- (1) Hunt 224T3- Hunt Name: Callahan:
 - (a) Bag Limit: one antlerless elk.
 - (b) Open Season: January 3-4, 10-11, 17-18, 24-25, 31 and Feb 1, 2004.

- (c) Hunt Area: 10% public lands. 172 sq. miles. In unit 24, west of Roseburg as follows: beginning at junction of Callahan Rd (CTR 174) and BLM Rd 27-7-4.0; southwest on 27-7-4.0 to Reston Rim Rd (Weyerhaeuser 9540 & 28-8-3.0); south and west on 28-8-3.0 to 28-8-9.1; west on to Burnt Mt Rd (28-8-16.0); north and west on 28-8-16.0 to Burnt Ridge Rd (27-9-24.0); north on 27-9-24.0 to 26-9-8.0; north and west on 26-9-8.0 to Rd 5000 (Williams River Rd); west and north on 5000 to 4000 (Millicoma River Rd); west on 4000 to 1000 (Matson Cr Rd); north and east on 1000 to Loon Creek Road (CR 3); east and north on CR 3 to Soup Cr (CR 72 and 23-9-19.0); east on 23-9-19.0 to 23-9-4.0; south and east on 23-9-4.0 to 24-9-28.0; south and east on 24-9-28.0 to section 4 (1 mile east of Old Blue); south and east 1/2 mile on 24-9-28.0 to road 24-8-20.0 (Blue Access Rd 3606); south on 24-8-20.0 (becoming Bateman Rd at junction of Weyerhaeuser 2000 and 24-10-29.0) to 8420 road; southeast on 8420 to 8800; south and east on 8800 (25-8-1.0) to 8500; east and south on 8500 to 5340; southeast on 5340 to junction of CR 174 and 27-7-4.0 (point of beginning).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 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 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04

Adm. Order No.: DFW 131-2003(Temp)

Filed with Sec. of State: 12-26-2003

Certified to be Effective: 1-1-04 thru 4-1-04

Notice Publication Date:

Rules Amended: 635-041-0065, 635-042-0130, 635-042-0135

Subject: Amend rules to establish the winter season for Treaty Indian fishers in the Columbia river above Bonneville Dam. Amend rules of commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam. Revisions consistent with action taken December 19, 2003, by the Columbia River Compact.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-041-0065

Winter Salmon Season

- (1) Salmon, steelhead, shad, sturgeon between 4 and 5 feet in length, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, Zone 6, from 12 noon February 2, 2004 to 12 noon March 21, 2004.

- (2) There are no mesh size restrictions.
 - (3) Closed areas are set forth in OAR 635-041-0045, with the exception of Spring Creek Hatchery, remain in effect.
 - (4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325, 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp),

f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04

635-042-0130

Smelt Season

- (1) Smelt may be taken for commercial purposes from the Columbia River, Zones 1-5, from 3 a.m. to 9 p.m. on the following dates:

January 4, 2004, January 6, 2004, January 8, 2004, January 9, 2004, January 11, 2004, January 13, 2004, January 15, 2004, January 16, 2004, January 18, 2004, January 20, 2004, January 22, 2004, January 23, 2004, January 25, 2004, January 27, 2004, January 29, 2004, January 30, 2004, February 1, 2004, February 3, 2004, February 5, 2004, February 6, 2004, February 8, 2004, February 10, 2004, February 12, 2004, February 13, 2004, February 15, 2004, February 17, 2004, February 19, 2004, February 20, 2004, February 22, 2004, February 24, 2004, February 26, 2004, February 27, 2004, February 29, 2004, March 2, 2004, March 4, 2004, March 5, 2004, March 7, 2004, March 9, 2004, March 11, 2004, March 12, 2004, March 14, 2004, March 16, 2004, March 18, 2004, March 19, 2004, March 21, 2004, March 23, 2004, March 25, 2004, March 26, 2004, March 28, 2004 and March 30, 2004.

- (2) It is *unlawful* to use other than the following gear for the taking of smelt in the Columbia River:

- (a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;
 - (b) Dip nets having a bag frame no greater than 36 inches in diameter;

- (c) Trawl nets with:
 - (A) Head rope not to exceed 25 feet in length;
 - (B) Foot rope or groundline not to exceed 25 feet in length;
 - (C) Door size not to exceed three feet by four feet;
 - (D) Mesh size not to exceed two inches;
 - (E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;
 - (F) Breast rope not to exceed five feet;
 - (G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

- (3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

- (4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

- (5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109, 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04

635-042-0135

Sturgeon Season

- (1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

- (2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size

ADMINISTRATIVE RULES

of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are as follows:

6:00 a.m. Tuesday, January 13, 2004 to 6:00 a.m. Wednesday, January 14, 2004;

6:00 a.m. Tuesday, January 20, 2004 to 6:00 a.m. Wednesday, January 21, 2004;

6:00 a.m. Tuesday, February 3, 2004 to 6:00 a.m. Wednesday, February 4, 2004; and 6:00 a.m. Tuesday, February 10, 2004 to 6:00 a.m. Wednesday, February 11, 2004.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any green sturgeon smaller than 48 inches or larger than 66 inches in overall length or any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection 2 of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04

Adm. Order No.: DFW 1-2004(Temp)

Filed with Sec. of State: 1-13-2004

Certified to be Effective: 1-13-04 thru 7-9-04

Notice Publication Date:

Rules Amended: 635-071-0000, 635-071-0005

Subject: Amend rules to correct the open season dates for Hunt 248A2 - Heppner No. 2. The open season dates published in the 2004 Oregon Big Game Regulations are incorrect.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2003 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled “2004 Oregon Big Game Regulations,” into Oregon Administrative

Rules. Therefore, persons must consult the “2004 Oregon Big Game Regulations” in addition to OAR Chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual **Oregon Big Game Regulations** are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the **2004 Oregon Big Game Regulations** are amended to change the open season dates for Hunt 248A2- Heppner No. 2 on page 73. The corrected open season dates can be found under 635-071-0005.

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

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

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

Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04

635-071-0005

Controlled Rocky Mountain Bull Elk Rifle Hunts

Hunt 248A2 – Hunt Name: Heppner No. 2:

(1) Bag Limit: one spike only elk;

(2) Open Season: October 27 through October 31, 2004;

(3) Hunt Area: 38% public lands. That part of Unit 48 north and west of North Fork John Day River.

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

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

Hist.: FWC 37-1982, f. & ef. 6-25-82; FWC 28-1983, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 45-1987, f. & ef. 7-6-87; FWC 18-1988, f. & cert. ef. 3-10-88; FWC 42-1988, f. & cert. ef. 6-13-88; FWC 20-1989, f. & cert. ef. 3-28-89; FWC 69-1989, f. & cert. ef. 8-15-89; FWC 29-1990, f. & cert. ef. 3-21-90; FWC 43-1990, f. & cert. ef. 5-25-90; FWC 61-1990, f. & cert. ef. 6-21-90; FWC 25-1991, f. & cert. ef. 3-12-91; FWC 64-1991, f. & cert. ef. 6-24-91; FWC 49-1992, 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 17-1996, f. 4-10-96, cert. ef. 4-15-96; 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 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04

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

Filed with Sec. of State: 1-13-2004

Certified to be Effective: 1-16-04 thru 1-31-04

Notice Publication Date:

Rules Amended: 635-053-0000, 635-053-0015, 635-053-0025

Subject: This rule will close the upland bird season in Baker and Wallowa Counties due to severe weather conditions and to protect vulnerable and physiologically stressed upland birds.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-053-0000

Purpose

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for hunting upland game birds pursuant to ORS Chapter 496.

(2) The document entitled “2003-2004 Oregon Game Bird Regulations,” is incorporated by reference into these rules. Notwithstanding this, the 2003-2004 Oregon Game Bird Regulations are amended to close upland bird seasons in Baker and Wallowa Counties. The closure information can be found under 635-053-0015 and 635-053-0025.

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

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

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

Hist.: FWC 81-1988, f. & cert. ef. 9-2-88; FWC 33-1996, f. & cert. ef. 6-7-96; FWC 45-1997, f. & cert. ef. 8-13-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 75-1998, f. & cert. ef. 9-4-98; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 82-1999(Temp), f. & cert. ef. 10-25-99 thru 2-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 2-2004(Temp), f. 1-13-04, cert. ef. 1-16-04 thru 1-31-04

635-053-0015

California Quail

Due to severe winter conditions, California Quail season is closed in Baker and Wallowa Counties effective January 16, 2004 through the remainder of the season.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 32-1981, f. & ef. 8-28-81; FWC 59-1982, f. & ef. 8-30-82; FWC 46-1983, f. & ef. 9-19-83; FWC 51-1984, f. & ef. 9-5-84; FWC 64-1985,

ADMINISTRATIVE RULES

f. & ef. 10-2-85; FWC 74-1985(Temp), f. & ef. 12-4-85; FWC 58-1986, f. & ef. 9-17-86; FWC 83-1987, f. & ef. 9-22-87; FWC 81-1988, f. & cert. ef. 9-2-88; FWC 106-1989, f. & cert. ef. 9-29-89; FWC 93-1990, f. & cert. ef. 9-4-90; FWC 99-1991, f. & cert. ef. 9-9-91; FWC 81-1992, f. & cert. ef. 8-26-92; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 58-1994, f. & cert. ef. 9-1-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 71-1995, f. & cert. ef. 8-31-95; FWC 33-1996, f. & cert. ef. 6-7-96; FWC 45-1997, f. & cert. ef. 8-13-97; DFW 2-2004(Temp), f. 1-13-04, cert. ef. 1-16-04 thru 1-31-04

635-053-0025

Chukar and Hungarian Partridge

Due to severe winter conditions, Chukar and Hungarian (Gray) Partridge season is closed in Baker and Wallowa Counties effective January 16, 2004 through the remainder of the season.

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

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

Hist.: FWC 21-1981, f. & ef. 6-29-81; FWC 32-1981, f. & ef. 8-28-81; FWC 59-1982, f. & ef. 8-30-82; FWC 46-1983, f. & ef. 9-19-83; FWC 51-1984, f. & ef. 9-5-84; FWC 64-1985, f. & ef. 10-2-85; FWC 74-1985(Temp), f. & ef. 12-4-85; FWC 58-1986, f. & ef. 9-17-86; FWC 83-1987, f. & ef. 9-22-87; FWC 81-1988, f. & cert. ef. 9-2-88; FWC 106-1989, f. & cert. ef. 9-29-89; FWC 93-1990, f. & cert. ef. 9-4-90; FWC 99-1991, f. & cert. ef. 9-9-91; FWC 81-1992, f. & cert. ef. 8-26-92; FWC 2-1993(Temp), f. 1-15-93, cert. ef. 1-16-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 58-1994, f. & cert. ef. 9-1-94; FWC 71-1995, f. & cert. ef. 8-31-95; FWC 33-1996, f. & cert. ef. 6-7-96; FWC 45-1997, f. & cert. ef. 8-13-97; DFW 2-2004(Temp), f. 1-13-04, cert. ef. 1-16-04 thru 1-31-04

.....

Adm. Order No.: DFW 3-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 12-1-03

Rules Amended: 635-006-0232

Subject: Amend rules to establish the average market value of food species used to determine damages for commercial fishing violations during the upcoming year.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2004 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Cabezon, \$3.43;

(B) Carp \$0.10 (1995 price);

(C) Cod, Pacific \$0.60;

(D) Flounder, arrowtooth \$0.12;

(E) Flounder, starry \$0.45;

(F) Greenling, \$3.90.

(G) Grenadier \$0.13;

(H) Hake, Pacific (Whiting) \$0.04;

(I) Halibut, Pacific, dressed weight with head on \$2.90 and with head off \$3.11;

(J) Herring, Pacific \$0.16;

(K) Lingcod, \$1.63

(L) Pollock, Walleye \$0.67 (2001 price);

(M) Pacific ocean perch, \$0.44;

(N) Rockfish:

(i) Black, \$1.32;

(ii) Blue, \$1.25;

(iii) Canary, using trawl gears \$0.47, using line and pot gears, \$0.46;

(iv) Widow \$0.44;

(v) Yellowtail, using trawl gears \$0.45, using line and pot gears \$0.77, and live \$1.63; (vi) Nearshore, \$6.20;

(vii) Shelf, \$2.37;

(viii) Slope, using trawl gears \$0.44, using line and pot gears \$0.51;

(ix) Shortbelly, using trawl gears \$0.29;

(x) Darkblotched, using trawl gears \$0.43;

(xi) Yelloweye, using trawl gears \$0.45, using line and pot gears \$0.55.

(O) Sablefish:

(i) Round weight, ungraded \$1.91, extra small \$0.96, small \$1.30, medium \$1.52, and large \$1.76;

(ii) Dressed weight, ungraded \$2.51, extra small \$2.31, small \$3.05, medium \$3.42, and large \$3.59.

(P) Salmon, Chinook, Ocean dressed weight: large \$2.10, medium \$1.85, small \$1.57, and mixed size \$1.96.

(Q) Salmon, coho, Ocean dressed weight: mixed size \$0.85.

(R) Salmon, pink, ocean dressed weight, ungraded, \$0.67;

(S) Sanddab, Pacific \$0.33;

(T) Sardine, Pacific \$0.05;

(U) Shad, American:

(i) Columbia, ungraded \$0.24;

(ii) Coast, ungraded, gill net and set net, \$0.30.

(V) Shark, blue \$0.49, Pacific sleeper, live \$0.62 (2000 price), short-fin mako \$1.25, sixgill, \$0.50 (2001 price), soupfin \$0.51, spiny dogfish \$0.08, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$1.40, and other species \$2.50;

(W) Skates and Rays \$0.18;

(X) Smelt, Eulachon (Columbia River), \$0.35 and other species \$0.20;

(Y) Sole, butter \$0.36, curlfin (turbot) \$0.35, Dover \$0.37, English \$0.34, flathead \$0.36, petrale \$0.99, rex \$0.42, rock \$0.33, and sand \$0.83;

(Z) Steelhead \$0.46;

(AA) Sturgeon, green \$0.47 and white \$1.73;

(BB) Surfperch \$5.85;

(CC) Swordfish \$3.25;

(DD) Thornyhead (Sebastolobus), longspine \$0.64 and shortspine \$0.79;

(EE) Tuna, albacore \$0.67, bluefin \$3.54, and yellowfin \$0.73 (2001 price);

(FF) Walleye \$2.89;

(GG) Wolf-eel \$2.02;

(HH) Wrymouth \$0.24;

(II) Hagfish \$0.24;

(JJ) Anchovy, Northern \$0.04.

(b) CRUSTACEANS:

(A) Crab, box \$1.11 (2002 price) Dungeness bay \$2.41 and ocean \$1.54, rock \$1.12, and Tanner \$0.69;

(B) Crayfish \$1.52;

(C) Shrimp, brine \$1.00, coonstripe \$3.89, ghost (sand) \$2.01, mud \$1.43, pink \$0.25 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket), and spot \$8.14;

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$16.97;

(B) Clams, butter \$0.30, cockle \$0.35, gaper \$0.30, littleneck \$2.25, razor \$1.64, and softshell \$0.45;

(C) Mussels, ocean \$0.43;

(D) Octopus \$0.66;

(E) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price);

(F) Squid \$0.21.

(d) OTHER INVERTEBRATES. Sea urchin, red \$0.40 and purple \$0.30.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 508

Stats. Implemented: ORS 508

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04

.....

Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 42-2003(Temp)

Filed with Sec. of State: 12-17-2003

Certified to be Effective: 12-17-03 thru 6-11-04

Notice Publication Date:

Rules Adopted: 413-330-0097, 413-330-0098

Rules Amended: 413-330-0085, 413-330-0087, 413-330-0090, 413-330-0095

Subject: These Criminal History Checks for System of Care Contractors rules set the parameters for checking and for evaluating criminal history of individuals seeking to contract with DHS for the purpose of providing personal services to child welfare clients.

Rules Coordinator: Annette Tesch—(503) 945-6067

ADMINISTRATIVE RULES

413-330-0085

Purpose

It is the goal of the Department of Human Services (Department or DHS) to reduce the risk of exploitation and abuse of children in the care of or receiving services from DHS. To that end, DHS will conduct criminal offender information background checks on individuals **before they** provide services to DHS clients under contracts paid for **with the flexible funds** allocated by DHS under the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc. These rules (OAR 413-330-0085 to 413-330-0098) establish procedures by which DHS obtains criminal offender information on these individuals and considers the information when determining the individual's suitability for working with children.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537
Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f.& cert. ef. 12-17-03 thru 6-11-04

413-330-0087

Definitions

(1) "Child" means an unmarried person who is under 18 years of age. A person between 18 and 21 years of age and in the custody of DHS is also considered a child for the purposes of these rules.

(2) "Client" means a child or adult receiving services from DHS.

(3) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, and includes the OSP Computerized Criminal History System.

(4) "FBI" means the Federal Bureau of Investigation.

(5) "OSP" means the Oregon State Police.

(6) "Subject individual" means, in the context of these rules, a contractor seeking to enter into a system-of-care contract with DHS. If the contractor is a business with more than one employee, the executive director, president, CEO, or equivalent is the subject individual. A contractor certified by DHS as provided for in OAR 413-200-0301 to 413-200-0401, "Safety Standards for Foster Care, Relative Care and Adoptive Families," and a contractor licensed by DHS as provided for in OAR 413-220-0000 to 413-220-0160, "Private Child-Caring Agency Licensing Standards," are not subject individuals.

(7) "System-of-care contractor" means an individual or business that has contracted with DHS and is paid with flexible funds allocated by DHS as part the Department's system-of-care settlement agreement with the Juvenile Right's Project, Inc.

(8) "System-of-care settlement agreement" means the agreement between the Department of Human Services and the Juvenile Rights Project, Inc. that includes provisions for the use of flexible funds to meet the individual needs of children and their families in order to promote safety, permanency, and well being.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537
Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f.& cert. ef. 12-17-03 thru 6-11-04

413-330-0090

System of Care Contractor Criminal History Policy

(1) As a result of the Department's system-of-care settlement agreement with the Juvenile Rights Project, Inc., DHS enters into personal service contracts with community service providers. Many of these providers are not licensed or certified by DHS, but they can provide important services to clients such as mentoring, tutoring, and therapeutic support. Before the Department contracts with one of these providers, the Department will complete a criminal background check as described below.

(2) DHS will not enter into a contract with a subject individual unless the subject individual consents to a criminal offender information records check and consents to be fingerprinted when required by these rules. DHS may decide not to contract with the subject individual if the individual makes a false statement about having been arrested for or convicted of a crime.

(3) A subject individual must provide all information required for a criminal offender information records check, including fingerprints, if required, on forms provided by DHS and according to procedures established by DHS, including:

(a) The subject individual must complete and sign form CF 1011F.

(b) If the subject individual acknowledges a prior arrest or a conviction of a crime, the subject individual must provide an explanation of the facts that supported the arrest or conviction and of the intervening circumstances and must provide written authorization required by DHS to verify the information.

(c) When required by these rules, two properly completed FBI fingerprint cards (form FD 258) with red overprinting in the "reason fingerprinted" block from the subject individual.

(4) In the process of obtaining a subject individual's consent to a criminal records check, DHS may ask the subject individual to consent to the Department's use of his or her social security number in conducting the criminal records check. Subject individuals will indicate their consent by their signatures.

(5) DHS will obtain and forward fingerprint cards to request criminal offender information on subject individuals from OSP and FBI as follows:

(a) If the subject individual lives or has lived outside the State of Oregon during any part of the five years prior to application, DHS will instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(b) If the subject individual has disclosed an arrest or conviction for a crime, DHS will instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI.

(c) If the subject individual's Oregon record indicates an arrest or conviction for a crime, DHS will forward the fingerprint cards to OSP for a positive identification verification and instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(6) DHS may grant an exception to the fingerprint requirement as described in this rule if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to the applicant or staff. For the exception to be effective, a form DHS 1011D, "Criminal History Exception Request," must be signed by the SDA manager or designee.

(7) DHS will not enter into a system-of-care contract with a subject individual unless:

(a) A check of Oregon LEDS has been completed and documented;

(b) All processes required by these rules to complete the criminal history check process, including a fingerprint-based criminal offender check for a subject individual, have been authorized and have commenced; and

(c) An exception authorized by OAR 413-330-0095 regarding a criminal conviction, if necessary for approval, has been granted and documented.

(8) If after the Department enters into a contract with a contractor it learns the contractor has a potentially disqualifying record, the Department will rescind the contract unless an exception is granted.

(9) DHS will review the criminal offender information of subject individuals. The assessment of the subject individual's suitability will be documented and filed in the contractor's file. Criminal offender information received from the OSP or the FBI is confidential and will not be released.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537
Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; CWP 42-2003(Temp), f.& cert. ef. 12-17-03 thru 6-11-04

413-330-0095

Crimes to Be Considered

(1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be a system-of-care contractor because the criminal conduct is fundamentally inconsistent with having responsibility for the care, treatment, or supervision of children. It may also be inappropriate for them to have contact with a child likely to occur while providing services to the child's family. Unless an exception is granted under these rules, a conviction for a crime listed in these rules or a false statement about a conviction may disqualify a subject individual from being approved as a system-of-care contractor.

(2) If a subject individual has been convicted of a crime described in section (3) of this rule, DHS will not enter into a system-of-care contract with the subject individual, and no exception will be granted.

(3)(a) DHS will not enter into a system-of-care contract with a subject individual, and no exception will be granted, if a subject individual has been convicted in Oregon or in another jurisdiction of any of the following crimes:

(A) A felony or misdemeanor crime of violence against a child.

(B) A felony involving:

(i) Rape, sodomy, or sexual abuse;

(ii) Intentional starvation or torture;

(iii) Murder or voluntary manslaughter;

(iv) Child abuse or neglect;

(v) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a child;

(vi) Violence, including domestic violence; or

(vii) A felony drug-related offense.

ADMINISTRATIVE RULES

(b) Crimes described in section (3)(a) of this rule include the following crimes under Oregon law and substantially similar crimes in Oregon and other jurisdictions:

- (A) ORS 163.095 Aggravated murder;
- (B) ORS 163.115 Murder;
- (C) ORS 163.118 Manslaughter in the first degree;
- (D) ORS 163.125 Manslaughter in the second degree;
- (E) ORS 163.355 Rape in the third degree;
- (F) ORS 163.365 Rape in the second degree;
- (G) ORS 163.375 Rape in the first degree;
- (H) ORS 163.385 Sodomy in the third degree;
- (I) ORS 163.395 Sodomy in the second degree;
- (J) ORS 163.405 Sodomy in the first degree;
- (K) ORS 163.408 Unlawful sexual penetration in the second degree;
- (L) ORS 163.411 Unlawful sexual penetration in the first degree;
- (M) ORS 163.425 Sexual abuse in the second degree;
- (N) ORS 163.427 Sexual abuse in the first degree;
- (O) ORS 163.525 Incest, if the victim of the offense is a child;
- (P) ORS 163.537 Buying or selling a person under 18 years of age;
- (Q) ORS 163.670 Using a child in display of sexually explicit conduct;
- (R) ORS 162.155 Escape in the second degree, if the offense involves the use or threatened use of violence;
- (S) ORS 162.165 Escape in the first degree, if the offense involves the use or threatened use of violence or a dangerous or deadly weapon;
- (T) ORS 162.325 Hindering prosecution, if the crime involves the use of violence;
- (U) ORS 163.145 Criminally negligent homicide;
- (V) ORS 163.160 Assault in the fourth degree, if the victim is a spouse or a child and the person has previously been convicted of assaulting the same victim;
- (W) ORS 163.160 Assault in the fourth degree, if person previously convicted of assaulting same victim or assault witnessed by child/step child of defendant or victim or other child living in household of defendant or victim;
- (X) ORS 163.160 Assault in the fourth degree if the victim is a child (misdemeanor);
- (Y) ORS 163.165 Assault in the third degree;
- (Z) ORS 163.175 Assault in the second degree;
- (AA) ORS 163.185 Assault in the first degree;
- (BB) ORS 163.205 Criminal mistreatment in the first degree, if the victim is a child or if the crime involves violence;
- (CC) ORS 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree
- (DD) ORS 163.225 Kidnapping in the second degree, if the victim is a child or spouse or if the crime involves violence;
- (EE) ORS 163.235 Kidnapping in the first degree, if the victim is a child or spouse or if the crime involves violence;
- (FF) ORS 163.535 Abandonment of a child;
- (GG) ORS 163.547 Child neglect in the first degree
- (HH) ORS 163.555 Criminal nonsupport;
- (II) ORS 163.684 Encouraging child sexual abuse in the first degree;
- (JJ) ORS 163.686 Encouraging child sexual abuse in the second degree;
- (KK) ORS 163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (LL) ORS 163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree;
- (MM) ORS 164.125 Theft of services, if the theft is by force for services valued at \$750 or more;
- (NN) ORS 164.225 Burglary in the first degree, if the offense involves violence;
- (OO) ORS 164.395 Robbery in the third degree;
- (PP) ORS 164.405 Robbery in the second degree;
- (QQ) ORS 164.415 Robbery in the first degree;
- (RR) ORS 166.015 Riot;
- (SS) ORS 166.165 Intimidation in the first degree;
- (TT) ORS 166.220 Unlawful use of weapon;
- (UU) ORS 167.017 Compelling prostitution;
- (VV) ORS 167.212 Tampering with drug records;
- (WW) ORS 167.262 Adult using minor in commission of controlled substance offense (for controlled substance other than less than 5 grams of marijuana);
- (XX) ORS 475.992(1) Manufacture or delivery of Schedule I, II or III counterfeit substance;
- (YY) ORS 475.992(2) Delivery of marijuana for consideration;
- (ZZ) ORS 475.992(3) Creation or delivery of Schedule I, II or III counterfeit substance;

(AAA) ORS 475.992(4) Possession of Schedule I or II controlled substance;

(BBB) ORS 475.993 Prohibited acts for registrants related to Schedule I controlled substance;

(CCC) ORS 475.995 Distribution of Schedule I, II or III controlled substances to minors;

(DDD) ORS 475.999 Manufacture or delivery of Schedule I, II or III controlled substance within 1000 feet of school;

(4) The Department will not enter into a system-of-care contract with a contractor who has been convicted of a crime not described in section (3) of this rule unless an exception is granted in accordance with this rule. The following persons are authorized to grant an exception:

(a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA Manager may authorize the SDA Assistant Manager, the SDA Child Welfare Manager, or a child welfare supervisor to grant an exception authorized by this subsection.

(b) If a subject individual has been convicted of a felony or of a crime involving domestic violence, other than one described in section (3) of this rule, a written exception issued by the SDA Manager is required to approve the subject individual. The SDA manager may authorize the SDA Assistant Manager or the SDA Child Welfare Manager to grant an exception under this subsection.

(5) A person authorized by section (4) of this rule to grant an exception must determine whether the subject individual is suitable to be a system-of-care contractor notwithstanding the criminal convictions. The person authorized to grant an exception must consider the following factors and must document the bases for the approval or denial on form DHS 1011D, "Criminal History Exception Request:

- (a) The severity and nature of the crime.
- (b) The number of criminal offenses.
- (c) The time elapsed since commission of the crime.
- (d) The circumstances surrounding the crime.
- (e) Content of police reports concerning the crime.
- (f) The subject individual's explanation of the crime.
- (g) The relationship of the criminal activity to the subject individual's capacity to safely provide the proposed services.
- (h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.
- (6) An exception granted with respect to a specific conviction need only be granted one time.
- (7) An exception granted under this rule does not establish a precedent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537

Hist.: SOSCF 10-1999, f. & cert. ef. 5-24-99; SOSCF 28-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 42-2003(Temp), f.& cert. ef. 12-17-03 thru 6-11-04

413-330-0097

Consideration of Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's suitability to be a system-of-care contractor. If a subject individual has a history of arrests for crimes involving any of the following conduct, the Department's field staff must consider the behavior that resulted in the arrests and assess whether or not the subject individual is suitable to be a system-of-care contractor:

- (a) Child abuse or neglect.
- (b) Spousal abuse.
- (c) A crime against children, including pornography.
- (d) A crime involving violence, including rape, sexual abuse, manslaughter or homicide.
- (e) Physical assault.
- (f) Battery.
- (g) Drug or alcohol offenses.
- (h) Weapons-related offenses.

(2) If a subject individual has been arrested for any of the crimes listed in section (1) of this rule, the supervisor and caseworker, in consultation with the management staff as designated by the SDA Manager, must assess the suitability of the subject individual to be a system-of-care contractor and document their findings. The persons conducting the assessment must consider and document their findings regarding the behavior or conduct that led to each arrest, how that behavior relates to the subject individual's qualifications to be a system-of-care contractor, and whether, given the behavior that led to the arrests, the subject individual is qualified to be a system-of-care contractor.

(3) In conducting the assessment, the supervisor and caseworker must consider the following with regard to the arrests:

ADMINISTRATIVE RULES

- (a) The subject individual's explanation of the circumstances surrounding and the behavior that led to each arrest.
- (b) The severity and nature of the behavior that led to the arrests.
- (c) Whether the subject individual's behavior that led to the arrests relates to or raises concerns about the individual's qualifications to be a system-of-care contractor.
- (d) The time elapsed since the arrests.
- (e) The circumstances surrounding each arrest.
- (f) Whether the subject individual was charged with or indicted for a crime related to the arrests.
- (g) The disposition of any charge or indictment related to the arrests.
- (h) Whether the subject individual's participation in counseling, therapy, education, or employment constitutes evidence of rehabilitation or a change in behavior.
- (i) Any other information related to the circumstances of the arrests or the behavior that led to the arrests that may relate to the subject individual's qualifications to be a system-of-care contractor.
- (j) The number of arrests.
- (4) The supervisor and worker may also obtain and review a copy of the police report of the arrest and interview the subject individual about the arrest.
- (5) Under no circumstances will DHS bar or refuse to approve an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560
Hist.: CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04

413-330-0098

Rights for Review and Contested Case Hearings

- (1) If DHS determines that the subject individual is not suitable to be a System of Care Contractor based on criminal history or false statement on the application form (unless the subject individual voluntarily withdraws from the process), DHS will notify the subject individual, by certified mail, that the subject individual:
 - (a) Has the right to inspect and challenge Oregon criminal offender information through the OSP procedures (ORS 181.555(3)).
 - (b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C., 20537-9700.
 - (c) May appeal DHS's determination of unsuitability and may indicate an intent to challenge information in the OSP or FBI report by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 provided that DHS receives a request for a contested case hearing in writing within 10 calendar days after the notice is mailed.
 - (2) A contested case hearing is conducted in accordance with ORS 183.413 to 183.470, OAR 137-003-0501 to 137-003-0700, and 413-120-0470.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537
Hist.: CWP 42-2003(Temp), f. & cert. ef. 12-17-03 thru 6-11-04

Adm. Order No.: CWP 43-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 413-070-0500, 413-070-0505, 413-070-0510, 413-070-0515, 413-070-0517

Subject: The Achieving Permanency rules are changing to provide clarification of "concurrent planning". Changes have also been made to make these rules easier to read and understand, correct grammar or usage, and update references to the Department's organizational units.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0500

Purpose

The Adoption and Safe Families Act and Oregon statutes require the Department to develop, document, and implement a permanency plan, and an alternate plan for every child placed in the Department's legal custody for substitute care placement. These rules (OAR 413-070-0500 to 413-070-0517) define the minimum agency expectations for achieving permanency for every child in substitute care and clarify the appropriate use of the Department's specialized Legal Assistance Program for children who are likely to be freed for adoptive placement. In the case of an Indian child, the Department follows the Indian Child Welfare Act and the Department's

Child Welfare policy I-E.2.1, "Placement of Indian Children," OAR 413-070-0100 to 413-070-0260.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04

413-070-0505

Definitions

(1) "Concurrent plan:" A plan established as an alternate or backup permanency plan when the goal of the permanency plan is placement with the parents. The concurrent plan is developed simultaneously with the plan to return the child to his or her parents. Although the concurrent plan may change as more information becomes available, the goal is to develop a safe and permanent resource with family members or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(2) "Concurrent planning:"

(a) Concurrent planning is the active implementation of concrete tasks that are individually formulated for a specific child to achieve the child's primary and alternate permanency plans.

(b) Concurrent planning begins by identifying specific timelines, designating specific dates along those timelines for the accomplishment of specific tasks, and identifying specific persons whose collaboration is key to accomplishing the tasks identified for both the primary and alternative permanency plans by or before the designated dates.

(c) Concurrent planning is a dynamic process that evolves through early, open, and ongoing dialogue with significant persons in the child's panorama or relationships as well as with the child, according to his or her age and capacity to participate, and their active engagement in identifying, working toward, and continuously re-evaluating and updating timelines and tasks until either the primary or alternate permanency plan is achieved.

(d) Concurrent planning has at its heart the child's best interests, the child's sense of time, and a commitment to active, simultaneous work toward the achievement of two different permanency plans. It continues until a legal determination is made that abandoning either the primary or the alternate permanency plan and aggressively completing the work to achieve the remaining plan in the most timely way possible is in the child's best interest.

(3) "Designated local review body:" An internal local committee, assigned by the SDA Manager or designee responsible for reviewing and approving case planning for substitute care placement, for permanency and concurrent planning and for adoption planning.

(4) "Permanency plan:" A plan to achieve permanency for a child.

(5) "Substitute care:" A child is in substitute care when the child is in the legal or physical custody and care of the Department of Human Services (the Department) and is in an out-of-home placement with someone other than his or her birth parent, legal parent, or legal guardian.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04

413-070-0510

Values

(1) Substitute care placement is temporary care for a child who requires protective care or specialized treatment.

(2) Every child needs and deserves a safe, nurturing, and permanent home.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04

413-070-0515

Procedures

(1) Initial Permanency Planning. DHS will develop a permanency plan and a concurrent plan for each child in the Department's custody within 60 days of the placement of the child into substitute care (see OAR 413-040-0000 to 413-040-0045, "Service Plans"). The health and safety of the child are of paramount concern in the development of the permanency plan. The permanency plan and concurrent plan each contains a permanency goal.

(2) If the Department does not pursue termination of parental rights for a child in its custody, the Department will document an exception to the requirement to file a petition to terminate parental rights in the following cases:

(a) When a child has been in care for 15 of the past 22 months.

(b) When a parent has been convicted of certain crimes.

(c) When the child has been abandoned.

ADMINISTRATIVE RULES

(d) At any time the permanency plan changes from "place with parents" to another plan other than adoption.

(3) If the goal is placement in another planned permanent living arrangement, the Department will document a compelling reason why it is not in the best interests of the child to be placed with a parent, to be referred for termination of parental rights and placed for adoption, to be placed with a relative, or to be placed with a legal guardian.

(4) Goals for Achieving Permanency. For each child in substitute care, the Department will have an appropriate and current permanency goal recorded in one of its information systems and in the child's service plan. The recorded goal reflects the service plan and the legal status of the child.

(5) Permanency Plan Reviews:

(a) The Department will review the permanency plan and concurrent plan for each child in its legal custody after the six-month review conducted in accordance with ORS 419A.106 (or any hearing conducted in lieu of such review) and prior to the permanency hearing required by ORS 419B.470(2) to determine the appropriateness of the permanency plans. But if the permanency hearing is scheduled to occur before the six-month review, the Department will review the permanency plan and the concurrent plan prior to the permanency hearing (see the Department's Child Welfare policy I-F.3.2.1, "Termination of Parental Rights," OAR 413-110-0200 to 413-110-0252). The caseworker must document this review on the form CF 147B.

(b) A permanency hearing is required by statute to be conducted for each child in substitute care within 12 months after the date of the jurisdictional hearing or 14 months after the child was first placed in substitute care, whichever is earlier. Subsequent permanency hearings must be conducted not less frequently than every 12 months after the initial permanency hearing. Subsequent permanency hearings are also required for all children placed in a permanent foster home or a preadoptive home. Nothing in these rules precludes the Department from tracking an earlier date to assure compliance or seeking an earlier review.

(c) The Department is authorized to ask the court to conduct a permanency hearing at any time. The court is not required to conduct a permanency hearing for a child in circumstances such as those described in this subsection but, based on an assessment of the specific facts of a case, the Department may determine that it is appropriate to request a permanency hearing:

(A) When the child was in substitute care but is living with a parent and remains under the jurisdiction of the court with an open case with the Department; or

(B) When the child did not have a permanency hearing because the child left substitute care and was living with a parent but has returned to substitute care.

(d) Following a permanency hearing the judge normally approves a permanency plan for the child that includes whether and when:

(A) The child will be placed with a parent;

(B) The Department will file a petition for termination of parental rights and the Department will pursue adoption for the child;

(C) The child will be referred for legal guardianship; and

(D) The child will be placed in another planned permanent living arrangement.

(e) If the Department plans to place the child in another planned permanent living arrangement, the Department will document a compelling reason, including an explanation for how the Department determined that it would not be in the best interest of the child to—

(A) Be placed with a parent;

(B) Be referred for termination of parental rights and placed for adoption;

(C) Be placed with a fit and willing relative; or

(D) Be placed with a legal guardian.

(6) Reasonable Efforts. When making reasonable efforts, or active efforts in the case of an Indian child, the child's health and safety are the paramount concerns. The Department is required to make reasonable efforts, or active efforts, consistent with strengths- and needs-based practices, to preserve and reunify families, to prevent or eliminate the need for removing the child from the child's parents, and to make it possible for the child to safely be placed with a parent. If continuation of reasonable efforts to place the child with a parent is inconsistent with the permanency plan for the child, the Department will make reasonable efforts to place the child in a timely manner in accordance with the concurrent plan and to complete the necessary steps to finalize the child's permanent placement. These efforts normally include a search for and an attempt to place the child with relatives as well as child-specific recruitment efforts to locate an adoptive resource. In the case of an Indian child, the Department will make active efforts to involve the Indian child's tribe in the selection of a permanent plan and a concurrent plan for the child.

(7) Reasonable efforts not required.

(a) If a court determines that a parent has subjected the child to aggravated circumstances, which are defined in ORS 419B.430, the Court may make a finding that the Department is not required to make reasonable efforts to make it possible for the child to return home

(b) If the juvenile court makes a finding that the Department is not required to make reasonable efforts to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to safely return home, and the Department determines that it will not make such efforts, the Department will ask the court to conduct a permanency hearing within 30 days of the finding.

(c) If the court's finding was based upon a conviction of a crime listed in ORS 419B.340, the Department will file a petition for termination of parental rights no later than 60 days after the court's finding unless:

(A) Upon the authorization of the Department the child is being cared for by a relative;

(B) The Department has documented in the case plan a compelling reason for determining that filing such a petition would not be in the best interests of the child as provided in ORS 419B.498(2); or

(C) DHS has not provided to the family of the child, consistent with the time period in the case plan, services as DHS deems necessary for the safe return of the child to the child's home, if reasonable efforts to make it possible for the child to safely return home are required to be made with respect to the child.

(8) Specialized legal assistance services (formerly called "permanent planning services." Specialized legal assistance services are appropriate only if adoption is a realistic alternative to placing the child with a parent. These services are used only if the case meets the requirements of the Department's Child Welfare policy "Termination of Parental Rights," policy I-F.3.2.1, Termination of Parental Rights.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02;

CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04

413-070-0517

Without Reasonable Efforts

In some cases, the Department may file a petition to terminate the parental rights of a parent whose child is in the Department's custody without making reasonable efforts to make it possible for the child to be safely returned home and without seeking or having the juvenile court make a finding that the Department is not required to make such efforts (see OAR 413-110-0250). This decision is based on the best interests of the child.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: CWP 44-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Amended: 413-110-0000, 413-110-0010, 413-110-0020, 413-110-0030, 413-110-0040

Subject: The Legal Risk Placement rules are being changed to correct language regarding notice to the court for a child placed on a legal risk basis out of state. These rules are also being changed to incorporate housekeeping revisions that reflect changes in structure within the Department of Human Services, such as the name of the child welfare policy and program cluster.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-110-0000

Purpose

A child in the legal custody of the Department of Human Services (Department) for whom the Department has determined that adoption is an appropriate permanency plan and who is in the process of being freed for adoption may be placed in an approved adoptive home with the understanding that if the child becomes legally free for adoption, the child will be adopted. In the past, such a placement was described as a "foster-adopt placement" or a "potential adoptive placement." The term for such placements is now "legal risk placement" if the placement meets the requirements specified in these rules (OAR 413-110-0000 to 413-110-0060).

Stat. Auth.: ORS 418.005(1)(a)

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

413-110-0010

Definitions

The following definitions apply to OAR 413-110-0000 to 413-110-0060:

(1) A "legal risk placement" is a placement that occurs when the Department believes that an adoption is in the best interests of the child; that the child is placed in an approved adoptive home; and the agency intends to approve this placement for adoption if the child becomes legally free for adoption.

(2) "Relative" has the same meaning it does in DHS Child Welfare policy I-E.1.1, "Working with Relatives Toward Placement of Children," OAR 413-070-0069(1)(a).

Stat. Auth.: ORS 418.005(1)(a)

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0020

Eligibility Criteria for Legal Risk Placement

A child may be placed in a legal risk placement when all of the following conditions have been met:

(1) The child is a ward of the court and is in substitute care and the Department has determined that adoption is an appropriate permanency plan for the child according to the procedures outlined in OAR 413-110-0300 to 413-110-0360, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child," (DHS Child Welfare policy I-F.2).

(2) In accordance with OAR 413-070-0060 to 413-070-0093, "Working with Relatives Toward Placement of Children" (DHS Child Welfare Policy I-E.1.1), the Department has considered all parents and relatives and has either determined none of them is a suitable permanent placement for the child or has selected one relative who meets the requirements of OAR 413-070-0060 to 413-070-0093 as the resource for a legal risk placement.

(3) The Department's Legal Assistance Specialist has assessed the child's status and has determined that a plan to free the child for adoption is in the best interests of the child.

(4) The Department has determined, in accordance with OAR 413-110-0300 to 413-110-0360, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child" (DHS Child Welfare policy I-F.2), that adoption is an appropriate permanency plan for the child, and an approved adoptive home has been selected according to the process outlined in DHS Child Welfare policy I-G.1.5, "Adoption Placement Selection," OAR 413-120-0000 to 413-120-0080.

(5) The Adoption Services Unit has reviewed and approved the plan.

(6) In the case of an out-of-state placement, prior to approval and designation of the child's legal risk placement:

(a) The Department has notified the court and has obtained its approval of the plan to place the child out of state;

(b) If the out-of-state placement is made through a private agency, the Department has a signed contract with the placing agency in the receiving state; and

(c) The Department has obtained verification that the child will receive medical coverage by the receiving state.

Stat. Auth.: ORS 418.005(1)(a)

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0030

Legal Risk Placement; Effective Date of Designation

(1) The designation date of the child's current caretaker home as a legal risk placement is the date the Department's Adoption Services Unit accepts all required documents.

(2) The designation date of the child's selected adoptive home (non-current caretaker) as a legal risk placement is the date the child is physically placed in the selected home or the date the Adoption Services Unit accepts all applicable documents (see section (1) of this rule), whichever date is later.

Stat. Auth.: ORS 418.005(1)(a)

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0040

Home Requirements

(1) The home in which the legal risk placement will be made must be studied and approved as an adoptive home in accordance with OAR 413-120-0200 to 413-120-0230, "Adoption Applications" or, in the case of an out-of-state placement, with OAR 413-040-0200 to 413-040-0330, "Interstate Compact on the Placement of Children." The home must also

meet the requirements of DHS Child Welfare policy II-B.1, "Safety Standards for Foster Care, Relative Care, and Adoptive Families," OAR 413-200-0301 to 413-200-0401.

(2) Each adoptive parent considered for a legal risk placement is informed by the Department of the risk of having the child removed and must sign an agreement that provides that—

(a) The adoptive parent understands that the child is not legally free for adoption;

(b) The adoptive parent understands that the Department cannot guarantee that the child will be legally free for adoption in the future;

(c) The adoptive parent wants to adopt the child; and

(d) The adoptive parent understands that the adoptive family will continue to provide temporary care for the child if adoption is not possible.

(3) The potential adoptive parents must complete the Adoption Recruitment Management System (ARMS) form 3010, "Legal Risk Placement Agreement," acknowledging that they understand the uncertainty of the legal risk placement.

Stat. Auth.: ORS 418.005(1)(a)

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: CWP 45-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 413-010-0748

Rules Amended: 413-010-0700, 413-010-0705, 413-010-0712, 413-010-0714, 413-010-0715, 413-010-0716, 413-010-0717, 413-010-0718, 413-010-0720, 413-010-0721, 413-010-0722, 413-010-0723, 413-010-0732, 413-010-0735, 413-010-0738, 413-010-0740, 413-010-0743, 413-010-0745, 413-010-0746, 413-010-0750

Rules Repealed: 413-010-0719

Subject: The Notice and Review of Founded Disposition rules are being changed to refine procedures for ensuring the rights of individuals to receive notice and the opportunity to request a review when a child protective services assessment results in a "founded disposition."

Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0700

Purpose

(1) The purpose of these rules (413-010-0700 to 0750) is to establish procedures for ensuring the rights of individuals to receive notice and the opportunity to request a review when a Child Protective Services (CPS) assessment results in a "founded" disposition.

(2) The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires child protective service agencies to provide notice to individuals identified as responsible for child abuse or neglect and to provide individuals with an opportunity to request and have a review of the disposition.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0705

Definitions

For the purposes of OAR 413-010-0700 to 0750, the following terms have these meanings:

(1) A "Child Welfare Field Office Review Committee" (Field Office Review Committee) is a group of three child welfare employees selected by an SDA Child Welfare Manager or a designee. One of the members must be a Manager and one must be staff trained in CPS assessment and dispositions. No one may serve on the Field Office Review Committee in the review of an assessment in which he or she was involved. Further requirements of the Field Office Review Committee are found in OAR 413-010-0735 and 413-010-0738.

(2) A "Central Review Committee" is a group of at least three child welfare employees selected by the Department's Manager for Child Protective Services or a designee, none of whom was involved in either the Field Office Review Committee or in the assessment that resulted in the CPS founded disposition under review. Further requirements of the Central Review Committee are found in OAR 413-010-0745 and 413-010-0746. The three child welfare staff on the committee must include:

(a) Either the Assistant Director for the Department's child welfare programs or a designee; and

ADMINISTRATIVE RULES

(b) Either the Manager for Child Protective Services or a designee; and

(c) At least one CPS consultant.

(3) "CPS" refers to the Department's Child Protective Services program, that is responsible for, among other duties, the assessment of alleged child abuse.

(4) "CPS Disposition" is a determination that completes a CPS assessment. Dispositions are discussed in OAR 413-015-1000 and include founded, unfounded, and unable to determine.

(a) "Founded disposition" means there is reasonable cause to believe that child abuse occurred;

(b) "Unfounded disposition" means no evidence of child abuse was identified or disclosed; or

(c) "Unable to Determine" means there are some indications of child abuse, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred.

(5) "CPS Founded Disposition" means that the Department determined, after completing a CPS assessment, that there is reasonable cause to believe that child abuse occurred.

(6) "Department" (DHS) means the Department of Human Services.

(7) "Juvenile" means a person younger than the age of 18 years who is identified as a perpetrator. OAR 413-010-0716 provides specific requirements regarding application of these rules to juveniles.

(8) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of a CPS founded disposition.

(9) "Legal proceeding" means a court or administrative proceeding that may result in a legal finding.

(10) "Local Child Welfare Field Office" means the Department's child welfare field office that conducted the CPS assessment that resulted in the CPS Founded Disposition subject to review under these rules.

(11) A "Notice of Child Welfare Field Office Review Committee Decision (Form CF 314)" is a written notice of the Decision of the Child Welfare Office Review Committee and Right to Request a Central Review. This notice is further described in OAR 413-010-0738.

(12) A "Notice of Central Review Committee Decision (Form CF 315)" is a written notice of the decision of the Central Review Committee.

(13) A "Notice of CPS Founded Disposition (Form CF 313)" is a written notice provided to a perpetrator of the right of the perpetrator to request a review. Further requirements of the notice are described in OAR 413-010-0715, 413-010-0717, and 413-010-0718, including who must receive the notice if the perpetrator is a juvenile.

(14) A "Notice of a Legal Finding (Form CF 316)" is a written notice that the Department has determined that there is a "legal finding" regarding who is responsible for the abuse that is the subject of the CPS founded disposition.

(15) A "Notice of Waived Rights for Review (Form CF 317)" is a written notice that Department staff send to a person requesting review, when the office has documentation that a person either refused to accept delivery of the notice of CPS founded disposition or accepted delivery of the notice of CPS founded disposition but did not request a review within the time period required in OAR 413-010-0720(7).

(16) "Perpetrator" means the person the Department has reasonable cause to believe is responsible for child abuse in a CPS founded disposition.

(17) "Person Requesting Review" or "Requestor" means a perpetrator, his or her attorney, or, if a juvenile is identified as the perpetrator, the person who may request a review on behalf of the juvenile, who requests a review of the founded disposition because they believe the founded disposition is in error.

(18) "Request for Review by Child Welfare Field Office Review Committee" means a written request for review by the Child Welfare Field Office Review Committee from a person requesting review. The specific requirements for a request for review are described in 413-010-0721.

(19) "Request for Review by Central Review Committee" means a written request for a review by the Central Review Committee from a requestor who has received a Child Welfare Field Office Review Committee Decision (Form CF 314) to retain a founded disposition. The specific requirements for a request for review by a Central Review Committee are described in OAR 413-010-0740.

(20) "SDA" means Service Delivery Area, which is a geographic region of one or more counties served by the Department and managed by an SDA Manager.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; SOSCF 9-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0712

Overview of the Procedures Required by These Rules

These rules regulate the following subjects:

(1) Applying DHS employee policies if the person identified as responsible in a CPS founded disposition is an employee of the Department (see OAR 413-010-0714);

(2) Providing notice of a CPS founded disposition as a result of a CPS disposition (see OAR 413-010-0715);

(3) Providing notice of a CPS founded disposition and other documents to juveniles (see OAR 413-010-0716);

(4) Inquiring about a review of CPS founded disposition completed before August 4, 2000, (see OAR 413-010-0717);

(5) Inquiring about a review of a CPS founded disposition when a person believes they have not received a notice (see OAR 413-010-0718);

(6) Field Office responsibilities when a person inquires about a review of a CPS founded disposition (see OAR 413-010-0719);

(7) Information included in the notice of CPS founded disposition (Form CF 313) (see OAR 413-010-0720);

(8) Making a Request for a review of a CPS founded disposition (see OAR 413-010-0721);

(9) Determining when legal findings preclude a right for review (see OAR 413-010-0722);

(10) Providing a notice of legal finding (see OAR 413-010-0723);

(11) Field Office responsibilities related to notices and reviews (see OAR 413-010-0732);

(12) Field Office reviews of CPS founded dispositions (see OAR 413-010-0735);

(13) Providing a notice of the field office's decision (see OAR 413-010-0738);

(14) Requesting a Central Review Committee review of CPS founded disposition (see OAR 413-010-0740);

(15) Field Office responsibilities in the case of a request for Central Review Committee review (see OAR 413-010-0743);

(16) Central Review Committee review (see OAR 413-010-0745);

(17) Providing notice of Central Review Committee decisions (see OAR 413-010-0746);

(18) Discretion of program manager to review CPS founded disposition (see OAR 413-010-0748); and

(19) Revising CPS founded dispositions in the Department's records (see OAR 413-010-0750).

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0714

Department Employee - Application of Department Employee Policies

When the perpetrator is a Department employee, the Department will follow the Department employee policies in addition to these rules.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0715

Providing Notice of a CPS Founded Disposition

(1) Notice in all cases except those founded based on threat of harm for domestic violence. Except as provided in OAR 413-010-0717, the local Child Welfare field office must deliver a notice of CPS founded disposition (Form CF 313) to the person identified as the perpetrator in the CPS founded disposition. If the perpetrator is a juvenile, notice must be provided as required by OAR 413-010-0716. If the perpetrator is not a juvenile, the notice must be delivered as follows:

(a) By certified mail, restricted delivery, with a return receipt requested to the last known address of the perpetrator; or

(b) By hand delivery to the perpetrator. If hand delivered, the notice must be addressed to the perpetrator and a copy of the notice must be signed and dated by the perpetrator to acknowledge receipt, signed by the person delivering the notice, and filed in the child welfare case file.

(2) Notice in cases founded for threat of harm for domestic violence. The method or process for providing notice of a CPS founded disposition for threat of harm for domestic violence should maximize the safety of the child, the adult victim, and Department employees. The Department will not use the adult victim to deliver the notice. If providing the notice would increase the risk of harm to a child, adult victim, or Department employee, an exception to notification may be made with Department management approval based on documentation of risk.

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

Stat. Auth.: ORS 418.005

ADMINISTRATIVE RULES

Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0716

Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile

(1) The Local Child Welfare field office that determines a juvenile is the perpetrator must deliver the "Notice of CPS Founded Disposition" (Form CF 313) to one of the following persons who may act on behalf of the juvenile in submitting a request for review based on having legal custody of the juvenile:

- (a) The juvenile's parent; or
- (b) The juvenile's guardian.

(2) If the juvenile is in the legal custody of the Department or the Oregon Youth Authority, the notice must be sent to both of the following:

- (a) The juvenile's attorney; and
- (b) The juvenile's parent, unless there is cause to believe such communication will be detrimental to the juvenile (see OAR 413-020-170(2)(c)).

(3) If the juvenile is in the legal custody of the Department and is unrepresented, the Department will ask the juvenile court to appoint an attorney for the juvenile.

(4) The "Notice of a CPS Founded Disposition" (Form CF 313) must be delivered by certified mail, restricted delivery, with a return receipt requested to the last known address of each mandatory recipient identified in sections (1) and (2) of this rule.

(5) Any other notices or documents that must be provided to perpetrators pursuant to these rules must be delivered to the appropriate persons as outlined in this rule if the perpetrator is a juvenile.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0717

Inquiry about a Review When a CPS Founded Disposition was Made Prior to August 4, 2000

(1) The Department will not deliver a "Notice of Founded CPS Disposition" (Form CF 313) to a person identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000, unless a person makes an inquiry to the Department about an opportunity for review and qualifies for a review as described in section (2) of this rule.

(2) An individual identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000, may contact any Child Welfare field office and inquire about a review of the disposition. If a complete record of the incident, including a complete copy of the CPS assessment and documentation collected during the CPS assessment, is still available, the Department proceeds in accordance with OAR 413-010-0718. If a complete record of the incident is no longer available, the Department will not conduct a review but will provide notice to the individual that a review will not be conducted and the reasons for that determination.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0718

Inquiry about a Review of a CPS Founded Disposition When a Person Believes They Have Not Received a Notice

If a person believes he or she is entitled under these rules to a "Notice of CPS Founded Disposition" (Form CF 313) but has not received one, the person may contact any Child Welfare field office to inquire about a review of the disposition. If the Child Welfare field office determines that the person making the inquiry has been identified as a perpetrator in a CPS Founded Disposition since August 4, 2000, staff must determine whether a "Notice of CPS Founded Disposition" (Form CF 313) was delivered to the perpetrator or the perpetrator refused the delivery of the notice, as evidenced by the returned receipt. If a notice was delivered to the perpetrator or the perpetrator refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review of CPS founded disposition has expired, the local Child Welfare field office must either prepare and deliver a "Notice of Waived Rights for Review" (Form CF 317) or inform the perpetrator by telephone of the information required in the "Notice of Waived Rights for Review" and document the telephone notification in the child welfare case file. If the perpetrator is a juvenile, the local Child Welfare field office must prepare and deliver a "Notice of Waived Rights" to the appropriate persons identified in OAR 413-010-0716. If no returned

receipt exists or if it appears that notice was not properly provided, the local Child Welfare field office must deliver a "Notice of CPS Founded Disposition" as provided in OAR 413-010-0720 or, if the perpetrator is a juvenile, as provided in OAR 413-010-0716.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0720

Information Included in the "Notice of a CPS Founded Disposition" (Form CF 313)

The "Notice of a CPS Founded Disposition" (Form CF 313) must include the following:

(1) The case and sequence numbers assigned to the CPS assessment that resulted in the CPS Founded Disposition;

(2) The full name of the individual who has been identified as responsible for the child abuse as it is recorded in the case record;

(3) A statement that the CPS disposition was recorded as "founded" including a description of the type of child abuse or neglect identified;

(4) A description of the CPS assessment that briefly explains how the CPS founded disposition was determined;

(5) A statement about the right of the individual to submit a request for review of the CPS founded disposition;

(6) Instructions for making a request for review, including the requirement that the requestor provide a full explanation why the requestor believes the CPS founded disposition is in error;

(7) A statement that the Department will not review a CPS founded disposition when a legal proceeding is pending and that the person requesting a review maintains the right to request a review for 30 days following resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the CPS founded disposition.

(8) A statement that the person waives the right to request a review if the request for review is not received by the local Child Welfare field office within 30 calendar days from the date of receipt of the "Notice of CPS Founded Disposition," as documented by a returned receipt.

(9) A statement that the Child Welfare field office review committee will consider relevant documentary information contained in the Department's case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information submitted with the request for review by the person requesting review.

(10) A statement that the review committee will not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that the local Child Welfare field office will send the requestor a "Notice of Child Welfare Field Office Review Committee Decision" (Form CF 314) within 30 days of receiving a request for review.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0721

Making a Request for a Review of a CPS Founded Disposition

A person requesting a review must use information contained on the "Notice of CPS Founded Disposition" to prepare a written request for review. The written request for review must be delivered to the local Child Welfare field office within 30 calendar days of the receipt of the Notice of CPS Founded Disposition and must include the following items:

(1) Date the request for review is written;

(2) Case number and sequence number found on the "Notice of CPS Founded Disposition;"

(3) Full name of the person identified as responsible for abuse or neglect in the CPS founded disposition;

(4) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the CPS founded disposition is in error and providing any additional information and documents the person wants considered during the review;

(5) The person's current name (if it has changed from the name noted in subsection (c) of this section);

(6) The person's current street address and telephone number; and

(7) The person's signature.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

413-010-0722

Determining When Legal Findings Preclude a Right to Request a Review

(1) The Department does not conduct a review when there is a legal finding consistent with the CPS founded disposition. In that case, a "Notice of Legal Finding" must be provided as provided in OAR 413-010-0723(1).

(2)(a) If the Department is aware that a legal proceeding is pending, the Field Office Review Committee may not review the disposition until the legal proceeding is completed.

(b) If the Department is aware that a legal proceeding is pending and decides not to review the disposition until the legal proceeding is completed, the local Child Welfare field office must notify the requestor within 30 days after receipt of a request for review that the Department will not review the disposition until the legal proceeding is completed and will take no further action on the request.

(c) The requestor may, at the conclusion of the legal proceeding, again submit a request for review within 30 days.

(d) The requestor retains the right to request a review for 30 days following resolution of the legal proceeding.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0723

Providing a Notice of Legal Finding (Form CF 316)

If a requestor inquires about a review of a CPS founded disposition and there is a legal finding consistent with the CPS founded disposition, the local Child Welfare field office staff must prepare and deliver a "Notice of Legal Finding" (Form CF 316) that informs the requestor that the Department will not review the disposition.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0732

Local Child Welfare Office Responsibilities Related to Notices and Reviews

(1) If an individual asks to review Department records for the purpose of reviewing a CPS founded disposition, state and federal confidentiality law, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090 govern the inspection and copying of records.

(2) The local Child Welfare field office must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a "Notice of CPS Founded Disposition;"

(b) Whether or not the Notice of CPS Founded Disposition was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period provided by the United States Postal Service;

(c) The date a Request for a Child Welfare field office review was received by the local Child Welfare field office;

(d) If a review is conducted by a Field Office Committee, whether the "Notice of the Child Welfare Field Office Review Committee Decision" (Form CF 314) was received by the addressee as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period as provided by the United States Postal Service; and

(e) The date a request for review by the Central Review Committee was received by the Department.

(3) The Child Welfare supervisor in each local child welfare field office or designee must maintain a comprehensive record of the reviews completed by the Field Office Review Committee on CPS founded dispositions arising out of the local Child Welfare field office to which the supervisor is assigned. The record must include the date, case number, sequence number, and the committee decision for each review completed by the Field Office Review Committee.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0735

Local Child Welfare Field Office Review Committees and Reviews of CPS Dispositions

(1) The Field Office Review Committee must conduct a review and issue a "Notice of Child Welfare Field Office Review Committee Decision"

(Form CF 314) to the requestor within 30 days from the date the local Child Welfare field office receives a request for review of a CPS founded disposition.

(2) If the request for review was delayed because a legal proceeding was pending as provided in OAR 413-010-0720(6), or the proceeding has been completed without a legal finding that would preclude a review, the review must occur within 30 days from the date the local Child Welfare field office receives a new request for review.

(3) The Field Office Review Committee must operate as follows:

(a) The committee must consider relevant documentary information contained in the Department's child welfare case file including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review.

(b) The Review Committee may not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect.

(c) A review must be based on current child welfare practice and definitions of child abuse. Procedural rules in place at the time the CPS assessment was completed also must be considered.

(d) All decisions of the committee must be decided by majority vote of the participating committee members.

(e) The Review Committee must determine:

(A) Whether there is reasonable cause to believe that child abuse occurred;

(B) Whether there is reasonable cause to believe that the person requesting review is responsible for the child abuse; and

(C) Whether there is reasonable cause to believe that the type of abuse for which the CPS assessment was founded is correctly identified in the assessment.

(f) Based upon its review of the CPS founded disposition and its determinations under subsection (d) of this section, the Review Committee must either retain the founded disposition or change the disposition to unfounded or unable to determine. The Review Committee also may change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the CPS disposition was founded.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0738

Notice of SDA Review Committee Decision

(1) The Child Welfare supervisor or designee must prepare a "Notice of Child Welfare Field Office Review Committee Decision" (Form CF 314) as described in OAR 413-010-0738.

(2) The "Notice of Child Welfare Field Office Review Committee Decision" (Form CF 314) must include the following:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe the person requesting the review was responsible for the child abuse;

(c) The decision of the Field Office Review Committee whether to change or retain the CPS founded disposition;

(d) If the CPS founded disposition is changed, whether it will be changed to "unable to determine" or to "unfounded;"

(e) If the Field Office Review Committee decides that the CPS founded disposition should be retained but that the type of abuse for which the disposition was founded should be changed, the type of abuse that should be founded and the reason for this change.

(f) If the CPS founded disposition is retained but the type of abuse is changed, notice that the person requesting the review has the right to request a new Child Welfare field office review of the change;

(g) A summary of the information and reasoning of the Field Office Review Committee upon which its decisions were based;

(h) If a CPS founded disposition is determined to be "unable to determine" or "unfounded," notice that the change will be noted in the CPS assessment narrative;

(i) If the founded disposition is retained, a statement about how to request a review by the Central Review Committee, as described in OAR 413-010-0740.

(2) The Local Child Welfare field office must place the request for review and a copy of the "Child Welfare Field Office Review Committee Decision" (Form CF 314) in the child welfare case file. A change may not be made in the existing written child welfare case file except to add the determinations of the committee.

ADMINISTRATIVE RULES

(3) The Department must send the "Child Welfare Field Office Review Committee Decision" (Form CF 314) by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 30 days of the request for review.

(4) When a Field Office Review Committee decision is made to change a CPS founded disposition, the Child Welfare supervisor or designee forwards the "Notice of Child Welfare Field Office Review Committee Decision," (Form CF 314) to the Department's Office of Information Services (OIS) or other appropriate organizational unit to make changes in the Department's Integrated Information System (IIS), Families and Child Information System (FACIS), or other appropriate information system.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0740

Requesting a Central Review Committee Review

(1) A person entitled to the notice described in OAR 413-010-0738 may, within 30 days of receipt of the notice, request a review by the Central Review Committee.

(2) A person requesting a review by the Central Review Committee of a CPS founded disposition may use a copy of the request for Child Welfare field office review or prepare a new request for review by the Central Review Committee, following the requirements outlined in OAR 413-010-0721.

(3) A person requesting a review by the Central Review Committee of a CPS founded disposition must deliver the request to the local Child Welfare field office within 30 days of the date the "Notice of Child Welfare Field Office Review Committee Decision" (Form CF 314) was received by the requestor, as evidenced on a United States Postal Service return receipt.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0743

Local Office Responsibilities in a Request for Central Review Committee Review

Within 10 calendar days after receiving a request for Central Review Committee review, the local child welfare office must forward the following documents to the Department's CPS Program Unit:

(1) The request for review; and

(2) A copy of the child welfare case records pertinent to the CPS founded disposition, including the information reviewed by the Field Office Review Committee.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0745

Central Review Committee Review

(1) The Central Review Committee will conduct a review and issue a "Notice of Central Review Committee Decision" (Form CF 315) within 60 days from the date the CPS Program Unit receives a request for a review by the Central Review Committee.

(2) The Central Review Committee operates as follows:

(a) The CPS program office schedules a review of the CPS founded disposition when a written request for review and case file information is received from the local Child Welfare field office.

(b) The Central Review Committee considers relevant documentary information contained in the Department's child welfare case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review with the request.

(c) The Central Review Committee will not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect.

(d) Reviews must be based on current child welfare practice and definitions of child abuse and neglect. Procedural rules in place at the time the CPS assessment was completed also must be considered.

(e) All decisions of the Central Review Committee must be decided by majority vote of the participating committee members.

(f) The Central Review Committee determines:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred;

(B) Whether there is reasonable cause to believe that the person requesting review is responsible for the child abuse or neglect; and

(C) Whether there is reasonable cause to believe that the type of abuse is correctly identified in the assessment.

(g) Based upon its review of the CPS founded disposition and the determinations required by subsection (e) of this section, the Review Committee will either leave the founded disposition unchanged or change the disposition to "unfounded" or "unable to determine." The Central Review Committee also may change the type of abuse for which the CPS disposition was founded.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0746

Notice of Central Review Committee Decision

(1) Within 60 calendar days of the date the Central Review Committee receives the request for review from the local Child Welfare field office, the Central Review Committee prepares and sends to the requestor by certified mail, restricted delivery, with a return receipt requested, a "Notice of Central Review Committee Decision" (Form CF 315) that includes the following information:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person requesting review was responsible for the child abuse;

(c) The decision of the Central Review Committee whether to change the CPS founded disposition;

(d) If the CPS founded disposition is changed, whether the change will be to "unable to determine" or to "unfounded disposition;"

(e) If the Central Review Committee decides that the CPS founded disposition should be retained but the type of abuse for which the disposition was founded should be changed, the new type of abuse and the reason for this change;

(f) If the CPS founded disposition is retained but the type of abuse or neglect is changed, notice that the person requesting the review has the right to request a new Central Review Committee review based on the change;

(g) A summary of the information used by the Central Review Committee and its reasoning in reaching its decisions; and

(h) If a CPS founded disposition is changed to "unable to determine" or "unfounded," notice that the change will be made to the CPS assessment narrative.

(2) A "Notice of Central Review Committee Decision" (Form CF 315) is sent to the person requesting review, the local Child Welfare field office for filing in the child welfare case record, the CPS worker, and the supervisor involved in the initial CPS assessment and determination of disposition.

(3) If the Central Review Committee determines that the CPS founded disposition should be changed, the Central Review Committee sends the decision (Form CF 315) to the CPS Program Coordinator.

(4) The CPS Program Office maintains a comprehensive record of the reviews of CPS founded dispositions conducted by the Central Review Committee. The record includes the date of the review, case number, sequence number, a copy of the materials reviewed by the committee in reaching its decision, and the committee decision for each review conducted by the Central Review Committee.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0748

Review Initiated by the Department

The CPS Program Manager may direct that either the Field Office Review Committee or the Central Review Committee review a founded disposition if there is good cause to do so, such as a determination that there is a legal finding that contradicts the CPS founded disposition.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

413-010-0750

Revising Founded Child Abuse Dispositions in the Integrated Information System (IIS)

When a Central Review Committee decision is made to change a CPS founded disposition, the CPS Program Coordinator or designee forwards the "Notice of Central Review Committee Decision" (Form CF 315) to the

ADMINISTRATIVE RULES

Department's Office of Information Services (OIS) or other appropriate organizational unit to make changes in the Department's Integrated Information System (IIS), Families and Child Information System (FACIS) or other appropriate information system.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: CWP 46-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 413-040-0205, 413-040-0215, 413-040-0265

Rules Amended: 413-040-0200, 413-040-0210, 413-040-0230, 413-040-0240, 413-040-0260, 413-040-0270, 413-040-0280, 413-040-0290, 413-040-0300, 413-040-0310, 413-040-0320, 413-040-0330

Rules Repealed: 413-040-0220

Rules Ren. & Amended: 413-040-0250 to 413-040-0325

Subject: The Interstate Compact on the Placement of Children (ICPC) rules are being changed to clarify how and when the ICPC needs to be utilized when any minor is placed across state lines for purposes of a residential, foster, relative or adoptive placement.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-040-0200

The Interstate Compact on the Placement of Children (ICPC)

(1) The Interstate Compact on the Placement of Children (ICPC or Compact) was adopted into law by the 1975 Oregon Legislature and is codified at ORS 417.200 to 417.260. All states are parties to the Compact as are the District of Columbia and the Virgin Islands. The protections of the Indian Child Welfare Act also apply to children who are subject to the protections of the ICPC.

(2) Article I of the Interstate Compact on the Placement of Children and ORS 417.200 provide, in part, that it is the policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement receives the maximum opportunity to be placed in a suitable environment with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(b) The appropriate authorities in the state where a child is to be placed have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(c) The proper authorities of the state from which the placement is made are able to obtain the most complete information to evaluate a projected placement before it is made; and

(d) Appropriate jurisdictional arrangements for the care of children are promoted.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - ORS 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0205

Denial or Delay of Placement

(1) The Department will not delay or deny placement of a child for adoption when an ICPC approved family is available outside the jurisdiction of the State of Oregon.

(2) An approved (adoptive) family (defined in OAR 413-200-0306(7)) who alleges denial of adoption approval as a result of residing outside the jurisdiction of the State of Oregon has the right to a contested case hearing as provided in ORS 183.310 to 183.550.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 260

Hist.: CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0210

Definitions for ICPC Rules

Unless the context indicates otherwise, these terms are defined for use in OAR 413-040-0200 to 0330:

(1) "AAICPC (Association of Administrators of the Interstate Compact on the Placement of Children)" means the national professional association of state administrators of the Interstate Compact on the Placement of Children, which is housed at the American Public Human Services Association (APHSA).

(2) "Compact Administrator" means the person for each party to the Compact responsible for carrying out the provisions of the Compact. In Oregon, it is the Assistant Director, Children, Adults and Families, Department of Human Services.

(3) "Department" means the Oregon Department of Human Services (DHS).

(4) "Deputy Compact Administrator" means the person appointed by a Compact Administrator as the coordinator to assure compliance with the law.

(5) "ICPC Approved Family" means a family approved by the ICPC Deputy Compact Administrator or designee after reviewing a home study.

(6) "Placement" means the arrangement for the care of a child in a foster home, relative foster home, non-paid relative home, or a child-caring agency or institution. It does not include the arrangement for care in an institute caring for the mentally ill, an institution primarily educational in character, or a hospital or other medical facility.

(7) "Receiving State" means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority or a private person or agency, whether for placement with a state or local public authority or with a private agency or person.

(8) "Sending Agency" means a party state or an officer or employee thereof; a subdivision of a party state or an officer or employee thereof; a court of a party state; or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

(9) "Sending State" means the state from which a proposed placement is made.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0215

Required Forms

(1) Several Department forms are referred to by form number in these rules. The forms are available at the Department's web site except as noted. When use of a form is required by these rules, the current version of the form must be used.

(2) To be effective, a form required by these rules must be complete.

(3) The following forms are required to be used by these rules:

(a) Form CF 93, "ICPC Foster Care Statement".

(b) Form CF 100A, "Interstate Compact Placement Request".

(c) Form CF 100B, "Interstate Compact on the Placement of Children Report on Child's Placement Status".

(d) Form CF 147 series (available from Department's FACIS system).

(e) Form CF 246, "Genetic and Medical History of Child and Biological Family".

(f) Form CF 246A, "Non-State Department of Human Services Adoptions".

(g) Form CF 246B, "ICPC Interstate Compact Placement of Children Genetic and Medical History of Child's Biological Family".

(h) Form CF 307 (available from Department's FACIS system).

(i) Form CF 1044, "Interstate Compact Financial/Medical Plan If Child is Placed Out-of-State".

(j) Form CF 1297, "Department of Human Services Travel Expense Claim".

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 260

Hist.: CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0230

Who Must Use Interstate Compact

(1) Placements subject to the Compact. A sending agency that arranges the placement of a child that is covered by the ICPC must comply with the requirements of the ICPC. The ICPC and these rules apply when a child is sent to, brought to, or caused to be sent or brought to a compact state by a sending agency for placement. This includes, but is not limited to, the following placements:

(a) Placement with a parent or relative if a parent or relative is not making the placement.

(b) Placement in a foster home, adoptive home, group home, residential treatment facility, or institution.

(2) Placements not subject to the Compact. The ICPC and these rules do not apply to:

(a) A placement of a child into a receiving state by a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or guardian in the receiving state.

(b) A placement of a child into a receiving state pursuant to another interstate compact to which both the state from which the child is sent or

ADMINISTRATIVE RULES

brought and the receiving state are party, or to another agreement between the sending and receiving states.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0240

Financial and Medical Responsibility of Sending Agency

(1) The sending agency is responsible for the support and maintenance of the child during the period of the placement.

(2) The sending agency is responsible for arranging for medical coverage for the child before the child is placed with an ICPC approved family.

(3) If a child has received a special rate or personal-care rate in Oregon, it is not paid to the ICPC approved family in the receiving state.

(4) The sending agency pays the receiving state's foster care rates, as described in OAR 413-090-0050.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0260

Penalty for Violating ICPC

(1) A private child-caring agency that violates a provision of the ICPC or these rules may be subject to a civil penalty and its license may be subject to denial, suspension, or revocation in accordance with the Department's rules.

(2) A person who violates the terms of the ICPC may be prosecuted criminally under ORS 417.990.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0265

Action on Referral From Oregon

(1) Upon receipt of the referral from the Oregon ICPC office, the receiving state compact office will conduct a home study. The home study is completed by the receiving state's worker as required by the AAICPC. The home study includes a recommendation regarding placement.

(2) The local field office in the receiving state sends three copies of the home study to the receiving state's compact office after completion. For ICPC purposes, the home study is valid for one year from the date on the home study. However, the receiving state's compact office may request and obtain additional information on any home study it finds to be incomplete, inaccurate or not current. The receiving state's compact office reviews the home study and approves or denies the placement in writing by completing and signing a form CF 100A and sending it to the Oregon ICPC office.

(3) Upon receipt of the home study or licensing study and the signed, approved form CF 100A, the Oregon ICPC office forwards a copy of each to the sending agency in Oregon. However, the Oregon ICPC office may request and obtain additional information from the receiving state on any home study it finds to be incomplete, inaccurate or not current. Approval for placement is valid for six months from the date the receiving state compact administrator or designee signs the form CF 100A.

(4) After the interstate application is approved by the receiving state, the child may be placed. After the child is placed, the Oregon sending agency completes and mails three copies of the form CF 100B to the Oregon ICPC office indicating the date of placement.

(5) Upon receipt of the CF 100B, the receiving state begins supervision. Supervision will include a visit to the resource home or institution in accordance with the receiving state's laws and policy. The caseworker in the receiving state prepares a progress report, as requested on the form CF 100A, and forwards the report in triplicate to the receiving state's deputy compact administrator. The receiving state's deputy compact administrator sends the report, in duplicate, to the Oregon ICPC office which in turn sends the report to the sending agency.

(6) The receiving state supervises the case until it is closed as described in OAR 413-040-0250.

(7) The Oregon ICPC office conducts annual case reviews on open ICPC cases.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 260
Hist.: CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0270

Preparing Referral to Send a Child Out of Oregon

(1) A sending agency making an out-of-state placement of a child must comply with the ICPC and these rules (OAR 413-040-0200 to 413-040-0330).

(2) A sending agency, other than the Department, that refers a child for an out-of-state placement in a child-caring agency or institution, must submit the following to the Oregon ICPC office:

(a) Prior to the referral:

(A) A complete, signed form CF 100A; and

(B) An acceptance letter from the facility, child-caring agency, or institution.

(b) After the placement is made, a form CF 100B.

(3) When the Department refers a child for placement outside the State of Oregon, the following requirements must be met:

(a) Three copies of the following must be submitted by the Department's field office to the Oregon ICPC office:

(A) A complete, signed form CF 100A;

(B) A cover letter outlining the Department's request;

(C) Form CF 1044;

(D) The court order or commitment order establishing jurisdiction over the child;

(E) The social summary on the child (forms CF 147 and CF 307), the most recent court report, and, if available, a psychological evaluation of the child and an evaluation identifying the child's current level of functioning and special needs;

(b) In addition to the requirements of subsection (a) of this section:

(A) If the case involves a request for an adoption home study, the Department's field office must submit to the Oregon ICPC office any available, current home study information that would assist with approval of the placement and the following:

(i) A termination-of-parental-rights order; or

(ii) A signed Release and Surrender and a Certificate of Irrevocability.

(B) Before a child in the Department's custody can be placed in an out-of-state residential treatment facility, only the residential resource consultant may recommend the placement contract and the manager of the Department's Treatment Services Licensing Unit authorizes the placement contract before the ICPC is initiated.

(C) If the Department is considering an out-of-state placement with a relative, the relative's home must meet the receiving state's certification criteria. If the receiving state does not require that relatives be licensed or certified, the Oregon ICPC office sends an ICPC Foster Care Statement (form CF 93) to the receiving state for completion.

(4) When an intact DHS foster or adoptive family is moving to another state, the Oregon ICPC office will follow regulations adopted by the AAICPC and assist the Department's field office staff in complying with those regulations.

(5) The Oregon ICPC office reviews all referrals for compliance with the ICPC, the Department's administrative rules, and AAICPC regulations and guidelines; signs as the Oregon deputy compact administrator or designee; and forwards the material to the receiving state compact office in duplicate.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 417.200 - 417.260
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0280

Transportation Procedures

(1) The Department pays transportation costs related to the interstate placement of a child in the Department's custody based on need. Before the Oregon ICPC office pays for those costs, the Department's field office must evaluate all other financial resources, including those of the child and family.

(2) The Department's field office may contact the Oregon ICPC office for assistance in paying transportation costs only if the field office is unable to identify other resources to pay for transportation costs.

(3) The ICPC office may pay for:

(a) A one way ticket for the child.

(b) A round trip ticket for the escort. If more than one escort is needed, additional tickets may be purchased as approved by the Oregon ICPC office.

(c) If needed, car rental, meals, and shipment of reasonable belongings.

(d) Transportation per diem costs at the current contract rates.

(e) A one night stay if the travel requires more than 10 hours. Additional nights may be approved by the Oregon ICPC office based on the child's special needs.

ADMINISTRATIVE RULES

(f) One pre-placement visit after adoption placement has been approved through ICPC. If the visit is to be made in-state, the Oregon ICPC office pays in-state rates only and pays one to five nights at the in-state rate. If the visit is out of state, current contract rates apply.

(g) Exceptions to the above travel standards may be approved by the ICPC manager.

(4) Travel arrangements for children in the Department's custody will be made only after the ICPC authorization number is received and must be made through the authorized carrier. Expenses will be reimbursed using the form CF 1297, Travel Expenses. Receipts must be submitted for expenses other than per diem.

(5) If a child in the Department's custody returns to Oregon, the Department's field office must contact the Oregon ICPC office prior to making travel arrangements.

(6) In custody cases where children are being returned to non-offending custodial parents, the field office returns the child to the non-offending custodial parent as long as jurisdiction, including temporary custody or shelter care order, has either been dismissed or has not been established in Oregon.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 – 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0290

Requests for Placement in Oregon

(1) A request for a home study and placement of a child in Oregon must be sent to the Oregon ICPC office for review. The Oregon ICPC office will forward the request to the appropriate Department's field office, tribe, court, private agency, or residential treatment center. The Department may contract with private agencies for certain relative adoptive home studies. If an out-of-state court asks a field office to complete a custody study, the field office will send the request to the Oregon ICPC office for review before taking action on the request.

(2) The Department's field office, or other agency where appropriate, will conduct a home study or certification study after receiving the request from the Oregon ICPC office. In addition to the suitability of the home, factors such as need for financial assistance, special education, and availability of medical or psychological services are considered. Each home study includes a review of Child Protective Services records, LEDS checks, and fingerprint checks when appropriate. For a placement regulated by the ICPC, the home study is valid for one year from the date on the study. However, the Oregon ICPC office may request additional information on any home study it finds to be incomplete, inaccurate, or not current.

(3) A relative-care, foster-care, or adoptive family must meet the requirements of OAR 413-200-0301 to 413-200-0401, "Safety Standards for Foster Care, Relative and Adoptive Families" and OAR 413-120-0300 to 413-120-0310, "Minimum Standards for Adoptive Homes."

(4) After the study is completed, the field office or agency must provide it to the Oregon ICPC office and must not provide the study to the party or agency that requested it. If a criminal history exception was required, a copy of the completed criminal history exception must be forwarded to the Oregon ICPC office with the completed study. The study must include a recommendation regarding placement.

(5) The Oregon ICPC Deputy Administrator or designee will review the study and will either approve or not approve the placement based on information contained in the report and case record. The Oregon Deputy Compact Administrator or designee follows AAICPC regulations, opinions, positions and guidelines when making the determination.

(6) Two copies of the study, along with two copies of the interstate application (form CF 100A), are sent by the Oregon ICPC office to the sending state's Interstate Compact Office. One signed copy of the approved form CF 100A is sent to the Oregon field office.

(7) The Oregon ICPC office is notified of the child's placement into Oregon by the sending state by receipt of the form CF 100B. A copy of this form is sent to the supervising agency to inform it of the placement and to start the supervision.

(8) Following placement of the child, supervision by the Oregon field office includes a visit to the resource home or institution no less frequently than once every 30 days.

(9) The supervising agency must submit progress reports (three copies) to the Oregon ICPC office as requested by the sending state on the form CF 100A.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 – 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0300

Requests That By-pass the Oregon ICPC Office

A request for a home study received by the field office directly from another sending agency, including a state, tribe, agency or court, must be sent to the Oregon ICPC office for review and handling. The field office will take no action on the request unless approval is given by the Oregon Deputy Compact Administrator or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 – 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0310

Independent and Private Agency Adoptions; Documentation Required for Placement in or from Oregon

(1) When a child is placed out of or into Oregon by a sending agency, including a parent or a private licensed agency, for purposes of adoption, the ICPC applies. Independent and private agency adoption referrals are processed as soon as practicable after receipt by the ICPC office of the complete compact placement referral.

(2) Referrals for placement covered by the Compact must be sent to the Oregon ICPC office, after the birth of the child, containing three copies of the following:

(a) Form CF 100A;

(b) Cover letter;

(c) Forms CF 246, 246A, and 246B;

(d) Medical information on the child;

(e) The consents and surrenders required by law. A mother must sign the consent and surrender after the birth of the child.

(f) An affidavit from the child's mother regarding the biological father and, if the legal father is not the biological father, regarding the legal father. The affidavit is not necessary unless the biological or the legal father has not signed a consent and surrender.

(g) A statement regarding the applicability of the Indian Child Welfare Act;

(h) If the birth parents have Native American heritage, Tribal releases that comply with the Indian Child Welfare Act;

(i) Documentation regarding all known facts about each legal or putative father. If the mother has stated that the identity or whereabouts of the father is unknown, documentation regarding what advice and information the mother was given and the reason why the father's identity or whereabouts are unknown to the mother;

(j) Affidavit regarding counseling;

(k) Affidavit regarding the Voluntary Adoption Registry;

(l) The completed home study;

(m) An update to the current home study if the completed home study is completed more than one year from the date the ICPC referral is made; and

(n) A legal risk statement signed by the adoptive family that acknowledges that the child is not legally free for adoption and that there is a risk of having the child removed from the home. This statement is required when one of the biological or legal parents has not signed a consent and surrender.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 – 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0320

Intercountry Adoptions; Applicability of ICPC

When a child is placed from a foreign country into a state other than Oregon by a private agency licensed in Oregon, the following requirements apply:

(1) If the child enters the United States under an IR4 visa, the entity facilitating the placement must comply with the ICPC before the child enters the United States. If the child enters the United States under an IR3 visa, the ICPC does not apply.

(2) If the Oregon agency takes custody of the child before placing the child outside the State of Oregon, the ICPC applies.

(3) If the Oregon private agency does not take custody of the child, the child has been fully adopted in the other country, and the U.S. Embassy has sanctioned the adoption, the ICPC does not apply.

(4) The Oregon private agency may be asked to assure that if the placement disrupts it will take custody of the child. This may be done through the ICPC process or by letter, depending upon the documentation requirements of the receiving state.

(5) Oregon licensed agencies must comply with the receiving state's laws and requirements regarding an intercountry adoption.

ADMINISTRATIVE RULES

(6) If ICPC applies, the adoption agency submits the form CF 100B to the Oregon ICPC office to close the case after the adoption is finalized.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

413-040-0325

Termination of Jurisdiction over Child

(1) The sending agency retains jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child that it would have had if the child had remained in the sending agency's state until the child:

- (a) Is adopted;
- (b) Reaches majority according to the law of the sending state;
- (c) Becomes self supporting;
- (d) Is discharged with the concurrence of the appropriate authority in the receiving state; or
- (e) Is returned to the sending state.

(2) Interstate services are not terminated until the receiving state's compact office concurs with closure.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - .260, Article V

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04, Renumbered from 413-040-0250

413-040-0330

Communications

In order to be effective, a communication required to be submitted to the Oregon ICPC office must be mailed or delivered to: The Deputy Compact Administrator, Oregon Interstate Compact on the Placement of Children, Department of Human Services, 500 Summer Street NE, E-70, Salem, OR 97301-1068; Telephone (503) 945-5671

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04

Adm. Order No.: CWP 47-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 413-110-0300, 413-110-0310, 413-110-0320, 413-110-0330, 413-110-0340, 413-110-0350, 413-110-0360

Subject: The Determining of Appropriateness of Adoption rules are being changed to provide clarity on how the decision is made that adoption is the child's permanent plan; provide new time frames for evaluating adoption as a plan when recruitment efforts have not been successful; and require that adoption as a concurrent permanency plan be formally determined by six months from the time of the child's placement. These rules are also being changed for the purposes of correcting errors of grammar or usage, and updating references to the Department's organizational units.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-110-0300

Purpose

These rules (OAR 413-110-0300 to 413-110-0360) establish the Department's policies for determining whether adoption is an appropriate plan for a child. In the case of an Indian Child, the Department follows the **Indian Child Welfare Act and the Department's Child Welfare policy I-E.2.1**, "Placement of Indian Children," OAR 413-120-0000 to 413-120-0080).

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0310

Definitions

(1) "Appropriateness of Adoption": The determination that a child can be successfully freed, placed and maintained in an adoptive placement and that adoption is in the best interest of the child.

(2) "Approved Family": A family that has been selected for a child in accordance with the Department's Child Welfare policy I-G.1.5, "Adoption Placement Selection," OAR 413-120-0000 to 413-120-0080) or I-G.1.1, "Current Caretaker Adoption Planning," OAR 413-120-0500 to 413-120-0550.

(3) "Local Office Permanency/Adoption Committee": The branch committee responsible for certain permanency and adoptions decisions, as specified in these rules. Members are selected by the local office from among the staff of the Department's field offices. The members must not be involved in the case to be heard.

(4) A "Permanency/Adoption Council" (Council) is a council consisting of field-management staff, permanency and adoption staff, and community partners from several Service Delivery Areas (SDA), except that the council in SDA 2 consists only of representatives from Multnomah County. A Council makes decisions for children whose county of jurisdiction is within their geographic area about appropriateness of adoption as a permanency plan, sibling planning, recruitment, adoption disruptions, and adoption selections referred by the local office. It also may provide permanency staffings to decide whether to place a child with an out-of-state relative resource prior to receipt by the Department of an approved adoption home study.

(5)(a) A "Permanency/Adoption Council Committee" (Committee) is a committee established by the Permanency/Adoption Council that is responsible for decisions regarding adoptive placement selections that are not the responsibility of the local office or the Department's Adoption Services Unit. The SDA manager or designee responsible for the local office may delegate a decision to the Committee. Each Committee must include at least three members not involved in the case to be heard by the Committee.

(b) There are two types of Permanency/Adoption Council Committees:

(A) An ad hoc committee selected by the child's worker. This committee consists of three people drawn from a pool of qualified permanency and adoption staff designated by the Council.

(B) The Standing Permanency/Adoption Committee. This committee is a standing committee of three persons appointed by the Council or the Council chair. Responsibilities of this committee include making decisions, such as those relating to sibling placement planning or current caretaker placement decisions, delegated by the Local Office Permanency/Adoption Committee to the Council.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; SOSCF 21-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0320

Values

(1) Adoption is a permanency option that should be considered as part of concurrent case planning for all children in substitute care.

(2) The assessment of the appropriateness of adoption as the permanency plan for a child begins at the time of the child's initial placement and continues until a permanent plan is achieved.

(3) If safe placement with a parent is not possible for a child, and the child can be legally freed for adoption and has an appropriate and available adoptive resource who wishes to adopt the child, it is concluded that adoption is an appropriate permanency plan for the child.

(4) Adoption is not the most appropriate plan for every child.

(5) The Department will not initiate proceedings to free a child for adoption unless there is a probability of being placed with an approved family.

(6) Decisions whether adoption is an appropriate permanency plan for the child must be made collaboratively.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0330

Procedure to Determine the Appropriateness of Adoption as a Permanency Plan

(1) Before the Department initiates proceeding to free a child for adoption, it makes a formal decision regarding whether adoption is an appropriate permanency plan for the child in accordance with these rules.

(2) The preliminary case-planning steps in the process of determining whether adoption is an appropriate permanency plan for the child are as follows:

(a) An adoption permanency goal must be considered concurrently with other permanency goals for a child in substitute care;

(b) When it appears that placement with a parent is not a viable goal, but not later than six months after the child enters substitute care, the local office must begin the process of obtaining information sufficient to make a formal decision whether adoption is an appropriate permanency plan for the child, for instance:

(A) The child's worker must obtain such pertinent information as psychological evaluations, therapist's assessments, an assessment by a mental

ADMINISTRATIVE RULES

health professional when appropriate that includes the child's attachment and other permanency needs, medical records, personal care or special rate assessments, individual education plans, and early intervention assessments;

(B) The child's worker must address the following areas:

(i) The child's ability to attach.

(ii) The needs of the child.

(iii) Prior or current caretaker or family relationships that could support or interfere with the child's ability to build new family relationships.

(iv) Information about the child's siblings and half siblings (see Child Welfare policy I-F.6, "Sibling Placement Planning in Adoption," OAR 413-110-0100 to 413-110-0140).

(v) Prospective adoptive resources who have made it known to the agency that they want to be considered as an adoptive placement for this specific child.

(vi) The child's willingness to consent to adoption, if the child is 12 years of age or older.

(3) Formal decision making at the local office.

(a) If the child's worker and supervisor believe adoption is an appropriate permanency plan for the child, and the legal assistance specialist concurs, the adoption plan may proceed without review by the Local Office Permanency/Adoption Committee.

(b) When the child's worker and supervisor review a case together and it is not clear that adoption is an appropriate permanency plan for the child, or if there are questions regarding available approved families, the determination whether adoption is an appropriate permanency plan for the child will be made by Local Office Permanency/Adoption Committee. The child's worker is responsible for scheduling a staffing with a Local Office Permanency/Adoption Committee within 60 days of the staffing by the child's worker and supervisor.

(c) If the child's worker and supervisor believe that adoption is not an appropriate permanency plan for the child, they must submit their written recommendation to the SDA Manager or designee. Their recommendation must include the compelling reasons for their assessment that it is not an appropriate permanency plan (see Child Welfare policy I-F.3.2.1, "Termination of Parental Rights," OAR 413-110-0240(3)(c)(D)). If the SDA Manager or designee disagrees with the recommendation or wishes to seek consultation, they must direct the child's worker to refer the determination of appropriateness of adoption to a Permanency/Adoption Council Committee.

(d) Before the Department initiates the permanency plan for adoption, the legal assistance specialist and the local office must agree that the plan is in the child's best interests and is achievable.

(4) When a Committee determines that adoption is an appropriate permanency plan for the child, the committee representative must record the decision regarding the appropriateness of adoption as a permanency plan and provide a copy of the documentation to the child's worker;

(5) The child's worker must send documentation of a Permanency/Adoption Committee decision to the Adoptions Services Unit to be included in the child's central office file.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; SOSCF 21-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0340

When Adoption is an Appropriate Permanency Plan

(1) When the Department determines that adoption is an appropriate permanency plan for the child, and in legal risk situations the legal assistance specialist has approved placement planning for the child, the child's worker must accomplish the following:

(a) The child's worker begins the process to locate an appropriate approved family while proceeding with efforts to free the child for adoption.

(b) The child's worker requests that either a Local Office Permanency/Adoption Committee or a Permanency/Adoption Council Committee review the decision that adoption is an appropriate permanency plan for the child if the child's worker has not been able to find an appropriate approved family for the child within four months of the initial staffing.

(c) If a child is placed for adoption and the adoption disrupts, the child's worker follows the procedures in Department's Child Welfare policy I-G.1.3, "Disruption of Adoptive Placements." The child's worker requests that either a Local Office Permanency/Adoption Committee or a Permanency/Adoption Council Committee review the decision determining that adoption is an appropriate permanency plan for the child if the child's worker has not been able to find an appropriate approved family for the child within six months of the disruption date.

(d) If an adoptive placement disrupts and there is question as to whether adoption is currently an appropriate permanency plan for the child, the question is referred by the worker to either a Local Office Permanency/Adoption Committee or a Permanency/Adoption Council Committee within three months of the disruption.

(2) In the case of a child for whom the permanency plan is adoption, the worker must document in the permanency plan the child's specific needs and the steps the Department is taking to find an adoptive family for the child who can respond to those needs, to place the child with an adoptive family, and to finalize adoption. At a minimum, such documentation must include comment on the child-specific recruitment efforts employed by the Department such as the use of state, regional, or national adoption exchanges, including electronic exchange systems, as well as efforts to identify potential adoptive families from the neighborhood and community in which the child resides.

(3) Out-of-state adoptions. The Department will not delay or deny placement of a child for adoption when an approved family is available outside of Oregon. If the out-of-state placement is a legal-risk placement, the worker must obtain approval from the Legal Assistance Specialist as required by the Department's Child Welfare policy I-F.5, "Legal Risk Placements," OAR 413-110-0000 to 413-110-0060. Once the legal risk placement is approved, the worker must notify the court and obtain approval of the plan prior to placing the child out of state. If the out-of-state adoption is supervised by a private agency, the Department will not make the placement of the child into the adoptive home until the Department has a signed contract with the placing agency. Out-of-state adoptions are further regulated by OAR 413-040-0200 to 413-040-0320.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; SOSCF 21-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0350

When Adoption Is Not an Appropriate Permanency Plan

(1) When it is determined that adoption is not the appropriate permanency plan for the child, and the compelling reason for this determination has been documented in the case file, the child's worker must develop and implement an alternate plan.

(2) If there are significant changes, the child's worker may refer the case to either the Local Office Permanency/Adoption Committee or the Permanency/Adoption Council Committee for a new determination whether adoption is an appropriate permanency plan for the child. The appropriateness of adoption as a permanency plan for the child can change as the child's circumstances change. When the legal assistance specialist has questions about the appropriateness of adoption as the permanency plan for the child, the legal assistance specialist may ask the local office to recruit for a potential adoptive placement prior to initiating the process to free the child for adoption.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; SOSCF 21-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0360

Review Process

When the Local Office Permanency/Adoption Committee or the Permanency/Adoption Council Committee has staffed a case and reached a decision with which the child's worker disagrees, the child's worker will staff the case with the worker's supervisor and SDA manager or designee. If the SDA manager or designee agrees with the child's worker, he or she will request review of the decision by the Adoption Services Unit Manager who may review the committee's decision and make the final decision.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; SOSCF 21-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04

.....

Adm. Order No.: CWP 48-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 413-110-0100, 413-110-0110, 413-110-0120, 413-110-0130, 413-110-0140

Subject: The Sibling Placement Planning in Adoption rules are being changed to clearly define Permanency Adoption Council and Permanency Adoption Council Committee. These rules also require

ADMINISTRATIVE RULES

DHS staff to invite the child's attorney (if assigned) and the CASA (if assigned) to the child's portion of the presentation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-110-0100

Purpose

These administrative rules, OAR 413-110-0100 to 413-110-0140, provide the Department's guidelines on maintaining sibling relationships to the extent it is in the best interests of the children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0110

Definitions

(1) A "Permanency/Adoption Council" (Council) is a council consisting of field-management staff, permanency and adoption staff, and community partners from several Service Delivery Areas (SDA), except that the council in SDA 2 consists only of representatives from Multnomah County. A Council makes decisions for children whose county of jurisdiction is within their geographic area about appropriateness of adoption as a permanency plan, sibling planning, recruitment, adoption disruptions, and adoption selections referred by the local office. It also may provide permanency staffings to decide whether to place a child with an out-of-state relative resource prior to receipt by the Department of an approved adoption home study.

(2) (a) A "Permanency/Adoption Council Committee" (Committee) is a committee established by the Permanency/Adoption Council that is responsible for decisions regarding adoptive placement selections that are not the responsibility of the local office or the Department's Adoption Services Unit. The SDA manager or designee responsible for the local office may delegate a decision to the Committee. Each Committee must include at least three members not involved in the case to be heard by the Committee.

(b) There are two types of Permanency/Adoption Council Committees:

(A) An ad hoc committee selected by the child's worker. This committee consists of three people drawn from a pool of qualified permanency and adoption staff designated by the Council.

(B) The Standing Permanency/Adoption Committee. This committee is a standing committee of three persons appointed by the Council or the Council chair. Responsibilities of this committee include making decisions, such as those relating to sibling placement planning or current caretaker placement decisions, delegated by the Local Office Permanency/Adoption Committee to the Council.

(3) "Siblings" are children with at least one biological parent in common.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0120

Values

(1) The Department values the preservation of sibling relationship when in the best interests of the children, recognizing them as the family relationships that can be the longest lasting.

(2) The Department values the placement of siblings with the same substitute care provider whenever possible and when it is in the best interests of the children to do so.

(3) If separation of siblings occurs in foster care, the Department views the separation as temporary and will work to reunite separated siblings when it is in the best interests of the

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04

413-110-0130

Procedure for Placing Siblings Who are in the Custody of the Department for Whom the Department has Identified Adoption as the Primary or Concurrent Permanency Plan

(1) The Department will attempt to place siblings in the same adoptive family when it is in the children's best interests. Early separation of siblings in substitute care can decrease the probability of the siblings being adopted by the same family. When siblings have been separated in substitute care, the Department takes appropriate action to remove barriers to reunification of the siblings to reunite them in placement as soon as possible when in the best interests of the siblings to do so, including the following at a minimum:

(a) The child's worker must review all attempts to reunite siblings and document in the case file the reasons why the attempts were not successful.

(b) If siblings are placed separately in substitute care, the Department will make efforts to ensure that the children have the opportunity for initiating and continuing contact when it is in their best interests to do so. The worker must document the visitation plan for siblings in the case file.

(2) If an adoptive placement decision has been made for a member of a sibling group, a sibling planning staffing is not required when planning adoption for another sibling. A preliminary current caretaker decision is considered an adoptive placement decision.

(3) When siblings do not move toward adoption simultaneously, the Department will attempt to give them an opportunity to maintain sibling relationships when it is in their best interests to do so by, for instance:

(a) Allowing a sibling to join another in an adoptive home; or

(b) Arranging contact between siblings when they are placed in separate adoptive homes.

(4) When the Department has identified adoption as the primary or alternative permanency plan for a child, the child's worker must attempt to determine the whereabouts of the child's siblings, including those who may have already been placed for adoption.

(5) If the Department learns that the child has a sibling placed in an adoptive home (finalized or designated), the child's worker must attempt to determine whether the sibling's adoptive family is interested in being considered as an adoptive resource for the child. If the adoptive family of the child's sibling is interested in adopting the child, the Department will instruct the family regarding the process to obtain an adoption study, and if such a study approves the family for adoption, the Department will consider them as a potential adoptive resource for the child along with other potential relative resources. The child's worker must provide the adoptive family of the child's sibling with written information regarding the adoption study process and the timelines required for completion and must document this in the case file record, as required in OAR 413-070-0093.

(6) When the Department begins recruitment for potential general adoption applicant families for a child for whom adoption is being planned and the child has one or more siblings who may need an adoptive placement in the future (for instance, the child's birth mother is pregnant or a sibling of the child has been placed in substitute care but adoption is not yet the primary or permanency plan for the sibling), the child's worker must recruit for potential adoptive families who may be able to adopt any or all of these siblings.

(7) When the Department considers placing siblings in separate adoptive homes or identifies adoption as the permanency plan for one or more siblings but identifies a plan other than adoption for one or more siblings, the child's worker must:

(a) Consider the following factors for each child in determining whether it is in the child's best interests to be separated from his or her siblings:

(A) Significant family data;

(B) Attachments;

(C) Medical condition;

(D) Psychological evaluations;

(E) Treatment needs;

(F) Behavior;

(G) Information from any person with significant information about the child, for instance the following:

(i) The child's therapist;

(ii) The child's attorney;

(iii) The child's CASA;

(iv) The child's tribe, if ICWA applies;

(v) The child's caregiver.

(H) The results of three months' of intensive efforts to recruit general applicant families interested in adopting siblings together.

(I) Any other relevant information.

(b) Discuss a possible sibling separation with his or her supervisor or the SDA manager or designee.

(8) After consideration of the factors in section (8)(a) of this rule, if the child's worker and supervisor concur that separation of the siblings is in the best interests of one or more of the siblings, the child's worker must staff the case with a standing committee of the Permanency/Adoption Council and invite the child's attorney, the child's CASA, the child's caregivers, and the child's tribe (if ICWA applies) to the child-presentation portion of the staffing.

(9) When a standing committee has made a decision to place siblings in separate adoptive homes, the Department's efforts to recruit adoptive families must include searches for families who can maintain some contact between the siblings, if the contact is in their best interests.

Stat. Auth.: 418.005

Stats. Implemented: 418.005

ADMINISTRATIVE RULES

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04

03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

413-110-0140 Appeal Process

When a standing committee has staffed a case and reached a decision with which the child's worker disagrees, the child's worker must staff the case with his or her supervisor and the SDA Manager or designee. If the SDA Manager or designee agrees with the child's worker, the SDA manager or designee must request a review of the decision by the Adoption Services Unit Manager. A request to review the decision of a standing committee must be received by the Adoption Services Unit Manager within 10 calendar days following the day the standing committee makes the decision. The Adoption Services Unit Manager will review the committee's decision and make the final decision whether to allow separation of the siblings.

Stat. Auth.: 418.005
Stats. Implemented: 418.005
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04

.....

Adm. Order No.: CWP 49-2003(Temp)
Filed with Sec. of State: 12-31-2003
Certified to be Effective: 1-1-04 thru 4-28-04
Notice Publication Date:

Rules Adopted: 413-070-0982

Rules Amended: 413-070-0915, 413-070-0935, 413-070-0937, 413-070-0980, 413-070-0981

Rules Suspended: 413-070-0981(T)

Subject: These Guardianship Assistance rules are being changed because Guardianship payment reductions taken effective February 1, 2003 are restored beginning November 1, 2003.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0915 Eligibility

(1) Under the Title IV-E Waiver federal terms and conditions and state legislative approval, the Department shall operate a guardianship demonstration project providing guardianship assistance to eligible children. Children in foster care for whom the Department is making a IV-E foster care maintenance payment (including children in tribal custody) may participate in the project. Children in foster care are ineligible to participate in the project when responsibility for their substitute care placement or Title XIX maintenance payment rests with the mental health or developmental disability system.

(2) Under the terms and conditions of the Guardianship Assistance Waiver demonstration project, children and their caretakers must meet the State established criteria to participate in the demonstration. The Department will comply with the general provisions over the full term of the Waiver demonstration project as stated in Oregon's approved amended Waiver demonstration project terms and conditions.

(3) There is no limit to the number of eligible children who may participate in the Guardianship Assistance Demonstration Project. However, the project is time-limited. Should federal funding end, children found eligible for and receiving Guardianship Assistance prior to the termination of the demonstration project will continue to receive monthly general fund payments at the project's conclusion. Funding will continue until they reach age 18 or otherwise become ineligible as defined by policy. Continuous program funding from the State's general fund coffers for children enrolled in the project was sought and approved by the 1999, 2001, and 2003 Oregon legislative sessions.

(4) The Department will offer this new option only when other permanency goals, including return to the parent(s) or adoption are determined not to be in the child's best interest. The Department will represent the guardianship option to families as one which will normalize and stabilize family life, empower care givers in assuming the complete parenting role and minimize the level of state intrusion into their lives. For example, because the children will no longer be committed to the custody of the Department, the care givers will no longer be required to get permission from the Department local office to take the child out-of-state for any reason, the placement will no longer be subject to Citizen Review Board substitute care reviews, and care givers will no longer be expected to participate in such reviews.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-

413-070-0935 The Agreement

(1) In order for Guardianship Assistance to take place, there must be a written Guardianship Assistance Agreement between the Department and the guardian for the financial support of the child in question. The agreement shall, in part:

- (a) Include the consent of the guardian;
- (b) List the monthly benefit the Department is offering;
- (c) Include the guardian's consent to and acceptance of the monthly cash benefit the Department is offering;

(d) Include the guardian's understanding that the benefit may not be greater than the basic foster care rate and personal care payment paid were the child is in foster care; No retroactive basic rate payment increases may be authorized. Increases in assistance payments are effective the first day of the month in which the request is made.

(e) Include the guardian's understanding that the benefit may be adjusted on an annual basis upon mutual agreement between the agency and the guardian.

(f) Include a provision for a reduction to guardian assistance payments in the event that legislative or executive branch action affecting the Department's budget or expenditure authority makes it necessary for the Department to implement budget reductions to the Guardian Assistance Program.

(g) Include the guardian's understanding that the guardian shall submit an application for child support enforcement services, as defined in OAR 413-070-0905(6), from each of the child's parents.

(h) Include the guardian's understanding that the guardian upon acquiring the right to receive child support, shall assign to CAF the right to receive.

- (A) Current support payments;
- (B) Any support payments that may have accrued before or after the child was placed with the guardian; and
- (C) Any support payments that may be imposed in a future order.

(i) Include the guardian's understanding that the guardian shall cooperate with DCS and CAF by performing tasks that CAF or DCS deems necessary to the support enforcement services described above in OAR 413-070-0905(6).

(j) Include the guardian's understanding that the basic Guardianship Assistance monthly payment shall be contingent upon the cooperation described in subsection (1)(h) of this rule.

(2) The agreement shall also provide that children for whom the Department is making a financial or benefit type of payment shall remain eligible for medical assistance under Title XIX of the Act.

(3) The Department shall maintain the written agreement between the Department and the guardian according to Department criteria in place at the time of the court's establishment of guardianship.

(4) The Department shall review each guardianship agreement annually.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

413-070-0937 Court Orders

(1) At the guardianship hearing the case worker will request the court order guardianship. The caretaker is ineligible for foster care payments once guardianship is effective and Department care and custody terminated.

(2) Guardianship Assistance may be approved regardless of whether the Order of guardianship is permanent or temporary or ordered by the juvenile court or probate court.

(3) Guardianship Assistance will not be approved if the court establishes guardianship and orders the Department to continue supervision of the child or guardians.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

413-070-0980 Budgetary Reductions of Guardianship Assistance

(1) In the event that legislative or executive branch actions impacting the Department's budget or expenditure authority makes it necessary for the Department to implement budget reduction to the Guardianship Assistance

ADMINISTRATIVE RULES

Program, the Department shall notify all recipients of Guardianship Assistance of the following:

- (a) The reason for the reduction;
- (b) The percentage or amount that the Guardianship Assistance will be reduced; and
- (c) The effective date of the reduced Guardianship Assistance payment.

(2) Reductions to Guardianship Assistance payments pursuant to this rule shall be applied uniformly to all recipients of Guardianship Assistance.

(3) Reductions to Guardianship Assistance payments pursuant to this rule shall not be subject to negotiation between the Department and the guardian family.

(4) Reductions to Guardianship Assistance pursuant to this rule shall not constitute a change in circumstances warranting a change in the recipient's Guardianship Assistance benefits.

(5) It is the intent of Department to restore as much as possible any Guardianship Assistance which has been reduced by operations of this rule. If additional funding becomes available to Department to restore, in whole or in part, the reductions to Guardianship Assistance payments required by this rule, the Department shall notify all recipients of Guardianship Assistance the percentage of or amount of the increase and the effective date of the increase. Any payment increase under this rule shall be applied uniformly to all recipients of Guardianship Assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

413-070-0981

Rate Changes

(1) Effective February 1, 2003, the monthly payments payable under all Guardianship Assistance agreements in effect on January 31, 2003, are reduced as follows:

(a) A 7.5 percent reduction to the base rate of Guardianship Assistance payments is applied uniformly to all recipients of Guardianship Assistance. Oregon's new monthly basic rates are:

(A) Child's Age — 0-5 — 6-12 — 13-18;

(B) Base rate — \$350 — \$364 — \$449.

(b) The Personal Care Rate portion of Guardianship Assistance, which provides payment for additional support and supervision of the child, is reduced by ten percent to \$4.15 per hour.

(2) Effective November 1, 2003, the monthly payments payable under all Guardianship Assistance agreements in effect on October 31, 2003, are changed as follows:

(a) An 8.108 percent increase to the base rate of Guardianship Assistance payments is applied uniformly to all recipients of Guardianship Assistance. Oregon's new monthly basic rates are:

(A) For children under six years of age — \$378.

(B) For children who have reached six years of age but are under the age of 13 — \$393.

(C) For children who have reached 13 years of age but are under the age of 19 — \$485.

(b) A 2.444 percent increase to the Personal Care Rate portion of Guardianship Assistance, which provides payment for additional support and supervision of the eligible child. This rate is increased to \$4.61 per hour.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 20-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 36-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

413-070-0982

Fair Hearings

Guardians, recipients of guardianship assistance, and applicants for guardianship assistance are entitled to fair hearings concerning disputes that arise in the administration of the subsidized guardianship program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04

Adm. Order No.: CWP 50-2003(Temp)

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04 thru 6-28-04

Notice Publication Date:

Rules Amended: 413-330-0900, 413-330-0910, 413-330-0920, 413-330-0930, 413-330-0940, 413-330-0950, 413-330-0970, 413-330-0980, 413-330-0990, 413-330-1000, 413-330-1010

Rules Suspended: 413-330-0960

Subject: These System of Care Short Form Contract rules are being changed because the 2003 Legislative Session, DHS Budget Authorization (HB 5030) authorized dollars to implement the System of Care Needs Based Service program providing flexible funds to the Department to meet the individual needs of children and their families in order to promote safety, permanency and well-being. These services are provided by the Department under an agreement between the Oregon Department of Human Services and the Juvenile Rights Project, Inc. These administrative rules describe how, when and who may use and authorize the use of the System of Care Short Form Personal Services Contract for the delivery of System of Care-funded individualized services to children and families and the process by which contracts for such services may be authorized.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-330-0900

Purpose

These administrative rules describe how, when, and who may use the System of Care (SOC) Short Form Personal Services Contract. These rules also describe how SOC Short Form Personal Services Contract approval authority will be delegated to a Children, Adults and Families (CAF) Child Welfare program manager or supervisor. A Child Welfare program manager or supervisor, who has delegated approval authority to sign a SOC Short Form Personal Services Contract, is responsible for the proper use and processing of all SOC Short Form Contracts they sign. The approval authority to sign a SOC Short Form Contract, cannot be delegated to any Child Welfare staff lower than a Child Welfare program manager or supervisor.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0910

Definitions

The following are definitions of words and terms used in these rules.

(1) "Approval Authority": Means a state agency has the authority to approve and execute a contract. Oregon Administrative Rule (OAR) 125-020-0220(1) gives the Department of Administrative Services (DAS) approval authority for all state agency contracts. DAS has delegated the approval authority to DHS for client services contracts (See OAR 125-020-0600(1)(a)).

(2) "Child" or "Children": Means a person 18 years of age or under. A youth who is between 18 and 21 years of age and in DHS custody, is also considered a child for purposes of these rules.

(3) "Client": Means a child or adult receiving services from DHS.

(4) "Contract Authority": Means a state agency has the authority to select a contractor, negotiate a contract, and sign a contract, but the agency has not been delegated approval authority by DAS to execute a contract. DAS must approve all personal services contracts before they can be executed, except for those personal services contract classes where DAS has delegated approval authority to a state agency (See OAR 125 division 020).

(5) "Contracting Out": Means contracting out work that is being performed by a member of the Oregon Public Employees Union.

(6) "Execute Contract": Means a contract has received all the required approval(s) and signatures. A Contract is authorized to begin services after a contract has been fully executed.

(7) "Family Member": Means a person who is related to the child(ren). A family member may be the child(ren)'s primary care giver or they may be a non-care giver.

(8) "Independent Contractor": Means an individual (who is at least 18 years of age) or a business that provides services to a state agency in which the state agency neither controls nor has the right to control the means or manner by which service(s) is performed. The state agency may control the results of service, but cannot control the means or manner in which the contractor carries out the service(s).

(9) "Nontraditional Contractor": Means an individual (who is at least 18 years of age) or a business not currently licensed by DHS/CAF as provided for by CAF Private Child Care Agency Licensing rules (OAR 413-220-0000 through 413-220-0160), who is providing less than \$8,000.00 in contracted services, regardless of the contract funding source or purpose, to DHS within a 12 month period. A Nontraditional Contractor is classified as a Traditional Contractor when the total dollar amount of all contracts, regardless of funding source or purpose, that a Nontraditional Contractor has with DHS exceeds \$8,000.00 within a 12 month period.

(10) "Primary Care giver": Means a person(s) who is responsible for providing care and supervision of a child(ren). A primary care giver may or may not be related to the child(ren).

ADMINISTRATIVE RULES

(11) "System of Care Short Form Personal Services Contract" or "SOC Short Form Contract": Means a class of personal services contracts funded by flexible funds allocated by DHS as part of the Department's System of Care Settlement Agreement with the Juvenile Right's Project, Inc., and developed by DHS to provide expedited service delivery to children and families within parameters set in these rules.

(12) "System of Care Contractor" or "SOC Contractor": Means an individual or business contracted with DHS and paid with flexible funds allocated by DHS as part of the Department's System of Care Settlement Agreement with the Juvenile Right's Project, Inc.

(13) "System of Care Settlement Agreement": Means the agreement between the Oregon Department of Human Services and the Juvenile Right's Project, Inc. which includes provisions for the use of flexible funds in meeting the individual needs of children and their families in order to promote safety, permanency and well being.

(14) "CAF": Means the State of Oregon, Department of Human Services, Children, Adults and Families.

(15) "Traditional Contractor": Means an individual who is at least 18 years of age and who has exceeded \$8,000.00 in total SOC contracts during the preceding 12 month period, regardless of funding source or purpose; or a business currently licensed by DHS/CAF as provided for by CAF Private Child Care Agency Licensing rules (OAR 413-220-0000 through 413-220-0160).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0920

Policy

(1) DHS' implementation of its Strengths/Needs Based System of Care model for delivering client services has placed an increased emphasis on providing the child and the primary care giver with the individualized services they need in a timely manner. The client's strengths and needs are collaboratively identified by the following parties, which include but are not limited to:

- (a) Child(ren) (if appropriate);
- (b) Primary care giver;
- (c) Non-care giving family member(s);
- (d) DHS; and
- (e) Other interested parties.

(2) Services are designed to meet the child(ren)'s needs and reach the agreed-upon outcomes.

(3) The System of Care Short Form Contract will help CAF staff expedite the contract process for specific types of services to meet agreed-upon outcomes. The SOC Short Form Contract is designed to:

(a) Provide nonresidential service(s) to meet the needs of a specific child.

(b) Increase the resource pool of service contractors, by allowing the use of both traditional and nontraditional contractors.

(c) Provide more timely delivery of services, by delegating approval authority for SOC Short Form Contracts, to the local Child Welfare program manager or supervisor.

(4) A SOC Short Form Contract can be used when all of the following conditions are met:

- (a) The contractor meets the definition of an independent contractor;
- (b) Services are:
 - (A) Provided for a specific child, sibling group, or primary care giver.
 - (B) Provided to help the children and/or family reach mutually agreed-upon outcomes.
 - (C) Nonresidential
 - (D) Limited to a maximum length of 12 months. The expectation is that the mutually agreed-upon outcomes will be reached within that time period.

(E) Limited to a maximum dollar amount of \$4,000. The expectation is that the mutually agreed-upon outcomes will be reached within that dollar amount;

(c) Contracted services shall not be:

(A) Services the recipient is eligible to receive and available from any public agency or institution, or from any private contractor under an existing contract;

(B) The same or similar as services being provided by DHS staff; and

(d) Funds are available and authorized for the type of service(s) and the client(s) to be served by the contract, and the cost is reasonable and commensurate to similar services.

(5) The statement of work, in a SOC Short Form Contract, will be written to describe the agreed-upon outcomes and the services to be provided. Outcomes will be specifically related to one or more of the following goals:

(a) Safety: Prevent placement or re-entry into care and ensure child's safety in the home.

(b) Permanency: Prevent movement in care and ensure stability in the living situation or facilitate permanency for children for whom the plan is Other Planned Permanent Living Arrangement.

(c) Facilitate Reunification: To facilitate the child's return home and preserve continuity of family relationships and permanency for the child.

(d) Permanency: To facilitate the child's permanency plan of adoption or guardianship.

(e) Well-being: To facilitate child's well-being by enhancing the family's capacity to provide for their children's needs.

(f) Well-being: To facilitate child's well-being by ensuring children receive adequate and appropriate services to meet medical, physical, mental health, social, emotional development or educational needs.

(6) Contracted services must be provided by the contractor. The SOC Short Form Contract does not allow subcontracting. A traditional contractor may use an employee/s to provide the contracted services. However, a nontraditional contractor cannot use an employee to provide the contracted services.

(7) A SOC Short Form Contract may be terminated by DHS with seven (7) days written notice to the contractor.

(8) A "Short Form Contract" printed format cannot be altered. If the Short Form Contract format is changed by anyone, regardless of the reason or circumstance, the contract cannot be executed and is void.

(9) Once the contract is signed by both parties and executed, the SOC Short Form Contract and cover sheet must be forwarded to the CAF Technical Assistance Unit, by facsimile, within 24 hours of execution.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0930

Contractor

(1) A Short Form Contract will only be written with a provider who is an independent contractor.

(2) A SOC Contractor must be at least 18 years of age.

(3) Selecting a contractor for a SOC Short Form Contract will be done by direct negotiations. DHS will negotiate directly with the contractor who is determined to be the best able to provide the services at a reasonable price. No informal or formal contractor selection and solicitation process will be required. This will allow DHS to quickly select and contract with a contractor.

(4) A nontraditional contractor will be considered a traditional contractor once the total dollar amount of all contracts the individual has with DHS, regardless of funding source or purpose, exceeds \$8,000 during a 12 month time period. At this point the insurance and liability coverage requirements increases. A traditional contractor will be required to meet all contractual insurance requirements, including obtaining professional liability insurance, if required by DHS. The 12 month time period is measured from the earliest contract begin date to the latest contract end date for all contracts that a nontraditional contractor has with DHS.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0940

Types of Service

(1) The types of services that a SOC Short Form Contract can be used with a traditional contractor include:

(a) Housing/Food: Housing/lodging/rent/deposits, utilities, home repairs, food, household necessities, cleaning services, supplies and equipment;

(b) Transportation: Includes transportation for visitation, as well as bus passes, other fares, auto repair, and reimbursement when family is transported by community or family member;

(c) Assessment/Testing/Evaluations: Includes psychiatric, psychological, psycho-social, behavioral, developmental, medical or educational which are not available through other resources including Administrative and other Medical budgets and school districts;

(d) Therapeutic and Rehabilitative Services: Family, group and individual therapy including drug and alcohol treatment services, not available through other sources, including OMAP and Administrative and Other Medical budgets, or family based services contracts (includes IFS, FSAT, Parent Training, etc);

(e) Skills Training/Support: Includes parent coaching, mentoring, psycho-social skills training and support, shadowing or one-on-one supervision and/or support of daily activities, transition support services, sub-

ADMINISTRATIVE RULES

care or in-home behavior support/management, and education which are not available through other resources including Administrative and Other Medical budgets and school districts;

(f) Support Services for Care Givers: Time-limited services for parents, foster parents and relative care takers not covered by other sources;

(g) Well-Being and Developmental Needs: Expenses related to school or recreational activities, including fees for sports, camps, school trips, music, arts or other activities. Includes activities related to a child's traditional or cultural needs or developmental milestones.

(2) The types of services that a Short Form Contract can be used with a nontraditional contractor are Skills Training/Support. Skills/Training Support includes parent coaching, mentoring, psycho-social skills training and support, shadowing or one-on-one supervision and/or support of daily activities, transition support services, sub-care or in-home behavior support/management, and education which are not available through other resources including Administrative and Other Medical budgets and school districts;

(3) Goals and services must be entered into the DHS Integrated Information System (IIS) by the DHS worker. Enter the person letter for parent(s) and children benefitting from and/or participating in the authorized services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0950

Insurance

(1) Traditional contractor insurance requirements. The coverage(s) and limit(s) of insurance(s) required for a traditional contractor are specified in their SOC Short Form Contract. DHS will require a traditional contractor to provide proof of all required insurance(s) before their SOC Short Form Contract can be executed.

(2) Nontraditional contractor insurance requirements.

(a) If a nontraditional contractor is providing service(s) that require transporting the client, then DHS will require a nontraditional contractor to provide proof of:

(A) A valid Oregon driver's license; and

(B) Automobile liability coverage that has limits not less than what the Oregon Financial Responsibility Law (ORS 806.060) requires. The nontraditional contractor will maintain, and keep in effect, automobile insurance, at their own expense, during the terms of all of their SOC Short Form Contracts.

(b) The Nontraditional Contractor shall obtain, at their own expense, and keep in effect during the term of all SOC Short Form Contracts, Commercial General Liability insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability and contractual liability coverage for the indemnity provided under this Contract, and is made on an occurrence basis. Combined single limit per occurrence shall not be less than \$100,000.00. Each annual aggregate limit shall not be less than \$250,000.00.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0960

Dispute Resolution

(1) When a Short Form Contract is used with a nontraditional contractor, SOSCF will request that the client sign a "DISPUTE RESOLUTION AGREEMENT" (form number to be assigned). The "DISPUTE RESOLUTION AGREEMENT" is between the client and SOSCF and provides a procedure to resolve disputes between the client and the nontraditional contractor. The client is encouraged to participate in good-faith in the dispute resolution process.

(2) The client's signature and participation in the dispute resolution process are voluntary.

(3) Dispute resolution between the client and a nontraditional contractor will be conducted in accordance with SOSCF policy.

(4) If a Short Form Contract is with a traditional contractor, SOSCF does not need to request the client to sign the "DISPUTE RESOLUTION AGREEMENT" form.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; Suspended by CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0970

Criminal History Records Check for SOC Contractors

(1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be System of Care Contractors because their criminal conduct is fundamentally inconsistent with any responsibility for care, treatment or supervision of children or other vulnerable persons.

(2) All SOC Contractors are subject to a Criminal History Records check as described in CAF Child Welfare policy III-D.1.1.2 (OAR 413-330-0085 through 413-330-0105). If the SOC Contractor is a business with more than one employee, the Executive Director, or equivalent, of the business is considered the Contractor under CAF Child Welfare policy III-D.1.1.2.

(3) Once the Contractor has been approved and the contract has been initiated, and prior to service being performed, the Contractor shall verify that any employee or volunteer who will have contact with children in the course of their duties has not been convicted of child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee or volunteer who will have contact with children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0980

DHS Abuse and Neglect Information Check

(1) To further protect children from abuse and neglect, DHS will check all SOC contractors against CAF's child abuse and neglect assessment information.

(2) DHS will maintain the confidentiality of client information in accordance with CAF administrative rules on "Confidentiality" (OAR 413-010-0000 through 413-010-0075).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-0990

Unauthorized Services

Services will not be obtained and the state will not be obligated for payment for those services until the contract has been written, approved, and signed by the contractor and DHS staff who have contract approval authority. Any DHS staff authorizing services that require a contract, prior to a contract being fully executed or obtaining services not covered by a contract, may be held personally liable for the cost of those services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-1000

Delegation of Short Form Contract Approval Authority

(1) A Child Welfare program manager or supervisor can request, in writing, to the CAF Program Performance and Reporting Administrator, that they be delegated SOC Short Form Contract approval authority. Working with the DHS Office of Contracts and Procurement, SOC Short Form Contract approval authority may be granted by the Program Performance and Reporting Administrator, or their delegate, when all of the following conditions have been met:

(a) Management staff, including but not limited to: the Child Welfare program manager, line manager or supervisor, office manager or equivalent, and System of Care resource developer or equivalent have received specific training regarding SOC Short Form Contract policy and procedure from CAF Program Performance and Reporting staff and staff from the DHS Contracts and Procurement unit;

(b) The Child Welfare program manager has submitted an implementation plan, to the Administrator of CAF Program Performance and Reporting, or their delegate, that describes how SOC Short Form Contracts will be processed at the local field office. The field office implementation plan will be submitted after the management staff has received the SOC Short Form Contract training;

(c) Staff from the CAF Program Performance and Reporting program will review all implementation plans to ensure compliance with these administrative rules and sound business and fiscal practices; and

(d) SOC Short Form Contract approval authority will be delegated by the Administrator of CAF Program Performance and Reporting or their delegate, in conjunction with the DHS Office of Contracts and Procurement, to the Child Welfare program manager or supervisor. The CAF Administrator or their delegate will delegate Short Form Contract approval authority after the field office management staff has received training and

ADMINISTRATIVE RULES

the implementation plan has been approved. The Child Welfare program manager or supervisor is responsible for the proper processing and use of the SOC Short Form Contract. The Child Welfare program manager or supervisor cannot delegate Short Form Contract approval authority and contract responsibilities.

(2) The CAF Administrator for Program Performance and Reporting or designee is delegated Short Form Contract approval authority.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. & cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; SOSCF 29-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

413-330-1010

Responsibilities of Child Welfare Program Managers or Supervisors with Delegate Authority

(1) The Child Welfare program manager or supervisor will be responsible for the following duties relating to SOC Short Form Contracts after they have been delegated approval authority. The responsibility for some of these duties may be delegated. Duties that a Child Welfare program manager or supervisor may delegate and those duties that cannot be delegated are listed below.

(a) Duties a Child Welfare program manager or supervisor may delegate:

(A) Determine if a contractor meets the criteria of an independent contractor;

(B) Determine if a contractor meets the criteria of a traditional or non-traditional SOC contractor;

(C) Determine if a contractor has the required insurance;

(D) Negotiate the following contract conditions:

(i) Services;

(ii) Outcomes;

(iii) Contract begin date;

(iv) Contract end date;

(v) Contract payment rate and number of services units.

(E) Monitor and act as the DHS Contract Administrator on the SOC Short Form Contract to ensure that the contractor is meeting all terms and conditions in the contract.

(b) Duties that a Child Welfare program manager or supervisor cannot delegate:

(A) Determine if the services being contracted for are the same as services provided by DHS staff;

(B) Determine if the contractor has a criminal history record in accordance with Child Welfare policy III-D.3.1.1.2 that would prevent DHS from contracting with the contractor;

(C) Determine if there are concerns or reasons why using the contractor may not be in the best interest of the child by checking CAF's child abuse and neglect assessment information;

(D) Signing and executing the Short Form Contract as the authorized agency representative. Services can begin after the contractor and the Child Welfare program manager or supervisor, who have received the proper delegated authority, have both signed the Short Form Contract;

(E) Signing and authorizing payments resulting from the performance of contracted service(s).

(2) The Child Welfare program manager or supervisor may be held personally liable for the cost of services provided prior to a SOC Short Form Contract being fully executed or for services provided outside the scope of the services identified in the SOC Short Form Contract.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 279.727, 279.729

Hist.: SOSCF 21-2000(Temp), f. 8-31-00, cert. ef. 8-31-00 thru 2-26-01; SOSCF 5-2001, f. & cert. ef. 2-26-01; CWP 50-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 6-28-04

.....

Adm. Order No.: CWP 51-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 413-120-0550

Rules Amended: 413-120-0500, 413-120-0510, 413-120-0520, 413-120-0530, 413-120-0540

Subject: The Current Caretaker for Adoption Planning rules have been changed to provide clarification in these areas: 1) immediate notification to current caretaker of decision not to select current caretaker as the adoption resource; 2) allows discretion for the Department to consider a current caretaker, who has previously declined to be considered an adoptive placement resource for the child, when recruitment has begun for general applications or an adoption com-

mittee has been set; 3) time frame for completion of current caretaker study; 4) adoption committee review protocol; 5) 30-day timeframe for scheduling current caretaker preliminary staffing from the point of child's worker request; and 6) correcting errors of grammar or usage, and updating references to the Department's organizational units.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0500

Purpose

These rules (OAR 413-120-0500 to 413-120-0550) establish the process by which a current caretaker of a child who is legally free or being freed for adoption may apply and be given consideration as the adoptive placement resource for the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.285, 418.290

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

413-120-0510

Definitions

These terms are defined for use in OAR 413-120-0500 to 413-120-0550:

(1) A "current caretaker" is a person currently having physical custody of a child who meets one of the following requirements:

(a) The person is a relative of the child as defined in OAR 413-070-0069(1)(a) who has had the child in his or her home consecutively for six months or longer. An exception to the durational requirement may be granted if the local office has completed a diligent search for relatives and the person who currently has physical custody is sole suitable relative. The SDA manager or designee may grant the exception if it is in the child's best interests. The determination that the exception is in the child's best interests must be explained in the case file.

(b) The person is a non-relative foster parent who has had the child in his or her home consecutively for six months or longer. An exception to the durational requirement may be granted if the local office has completed a diligent search for relatives and determined there is no suitable relative. The SDA manager or designee may grant the exception if it is in the child's best interests. The determination that the exception is in the child's best interests must be explained in the case file.

(2) "Local Office Permanency/Adoption Committee": The branch committee responsible for certain permanency and adoptions decisions, as specified in these rules. Members are selected by the local office from among the staff of the Department's field offices. The members must not be involved in the case to be heard.

(3) A "Permanency/Adoption Council" (Council) is a council consisting of field-management staff, permanency and adoption staff, and community partners from several Service Delivery Areas (SDA), except that the council in SDA 2 consists only of representatives from Multnomah County. A Council makes decisions for children whose county of jurisdiction is within their geographic area about appropriateness of adoption as a permanency plan, sibling planning, recruitment, adoption disruptions, and adoption selections referred by the local office. It also may provide permanency staffings to decide whether to place a child with an out-of-state relative resource prior to receipt by the Department of an approved adoption home study.

(4) A "Permanency/Adoption Council Committee" is a committee responsible for decisions regarding adoptions as specified in OAR 413-110-0300 to 413-110-0360 that are not the responsibility of the local office or of the Department's Adoption Services Unit. The two types of Permanency/Adoption Council Committees are:

(a) An ad hoc committee selected by the child's worker. This committee consists of three people drawn from a pool of qualified permanency and adoption staff designated by the Council.

(b) The Standing Permanency/Adoption Committee. This committee is a standing committee of three persons appointed by the Council or the Council chair. Responsibilities of this committee include making decisions, such as those relating to sibling placement planning or current caretaker placement decisions, delegated by the Local Office Permanency/Adoption Committee to the Council.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.285, 418.290

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

413-120-0520

Values

- (1) Every child has a right to a permanent family.
- (2) Decision making for a child should be guided by the child's best interests and an understanding of the child's current and future needs.
- (3) The psychological and emotional attachments of a child to the current caretaker are of vital consideration in determining the best interests of the child.
- (4) The best adoption placement selection decisions are always made as the result of a collaborative process.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.285 & 418.290

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

413-120-0530

Determine that Diligent Search Completed

Once the Department makes a formal decision, approved by a legal assistance specialist in the Adoption Services Unit, to proceed to free a child for adoption, or if a petition to terminate parental rights is filed by the child's attorney, and if a current caretaker expresses interest in being a permanent placement resource for the child in his or her care, the Department determines whether a diligent search for the relatives of the child (see OAR 413-070-0060 to 413-070-0075) has been completed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

413-120-0540

Scheduling, Arranging, and Staffing the Current Caretaker Committee

(1) Once a diligent search for relatives has been completed, the child's caseworker schedules a current caretaker committee. The purpose of the committee is to consider the current caretaker's interest in being the adoptive resource for the child.

(2) The committee must be scheduled within 30 days of the child's worker's request, unless the SDA Manager or designee determines that there is good cause to extend the deadline.

(3) Except as provided in subsection (a), (b), and (c) of this section, the committee must consist of at least three persons, the SDA manager or designee, a supervisor, and one other staff person from the local office who is knowledgeable about permanency and adoptive planning. Other compositions of the committee are required in the following situations:

(a) If the office responsible for the child is not the office serving the county in which the current caretaker resides, the committee must consist of one person approved by the child's local office, one person approved by the current caretaker's local office, and a third person agreed upon by the SDA managers or designees from the two offices.

(b) If the current caretaker is a Department employee or an employee of a partner agency, the current caretaker committee must be scheduled as a Central Office adoption committee.

(c) The child's caseworker, with the approval of his or her SDA Manager or designee, may schedule the current caretaker committee with a permanency/adoption council committee serving the child's local office.

(4) The child's caseworker must notify the child's attorney and the Court Appointed Special Advocate (CASA) of the time and location of the current caretaker committee and invite them to the child-presentation portion of the committee. The child's caseworker must notify the child's tribe, if ICWA applies to the child, of the time and location of the current caretaker committee and invite them to the committee. The child's attorney, CASA, and tribe may present information to the committee in person, in writing, or by phone. The child's attorney, the CASA, and the tribe may provide the caseworker with the names of other individuals who may have significant information regarding the child's needs. These persons may provide information in writing to the committee.

(5) At the committee, the child's worker presents information regarding the child and the current caretaker, and the foster home certifier presents information about the current caretaker. The committee considers information presented to it in person, by telephone, and in writing.

(6) If a current caretaker who has not previously requested consideration as a resource asks to be considered after the Department has requested but has not received approval of an adoptive home study on a relative resource, if recruitment has begun for general applicants, or if the date of the adoption committee has been set, the Department may consider the cur-

rent caretaker if it is in the best interests of the child to do so. In making this decision, the Department will consider:

(a) The child's individual needs, including the child's attachment to the current caretaker;

(b) The potential of the current caretaker to meet the child's current and lifelong needs; and

(c) The effect on the child of the delay in permanency that may occur as a result of the new consideration process.

(7) The committee may make only one of the following recommendations:

(a) That an adoptive study of the current caretaker be completed or updated within 90 days of the date of the current caretaker staffing. An exception to this deadline must be approved in writing by the SDA manager or designee. The completed adoption home study must address all concerns identified in the staffing. If the current caretaker has a current comprehensive foster or kinship home study on file, the adoption study may be abbreviated, addressing issues of concern raised in the designated committee and current and future child-specific issues of permanency and well being.

(A) The Department will consider a current caretaker as the adoptive resource for the child, and a current caretaker restaffing is not necessary. Final approval of this recommendation is delegated to the family's adoption worker, the child's worker, and a designated member of the field office's management staff. Any of these three persons may request a restaffing by the designated branch committee.

(B) The Department will consider the current caretaker's completed adoptive home study at the current caretaker committee restaffing.

(C) A central adoption committee will consider the current caretaker as well as studied non-related adoptive families except when the current caretaker is a relative. Only other relative families may be considered with the current caretaker relative.

(D) The Department will consider a non-relative or related current caretaker with studied relative families. If the non-current caretaker relative elects not to be considered, or the Department is unable to consider the non-current caretaker relative, the current caretaker will be considered alone. A current caretaker restaffing is not necessary. Final approval of this recommendation is delegated to the family's adoption worker, the child's worker, and a designated member of the field office's management staff. Any of these three persons may request a restaffing by the designated field office committee.

(E) The Department will consider a non-relative or relative current caretaker with studied relative families. If the non-current caretaker relative elects not to be considered, or the Department is unable to consider the non-current caretaker relative, the Department will consider the current caretaker's completed adoptive home study at the current caretaker committee restaffing.

(F) The Department will consider a non-relative current caretaker with studied relative families. If the relative elects not to be considered, or the Department is unable to consider the relative, the current caretaker will be presented at a central adoption committee with the other recruited non-related adoptive families.

(b) That the committee does not find that the current caretaker is likely to be able to meet the individual needs of the child over time and cannot recommend the current caretaker as the adoptive resource for this child. In this case, no study will be undertaken by the Department. The reasons for this decision must be documented using the form CF 251. The completed form is available to any Department adoption committee that considers the current caretaker. The child's caseworker must immediately notify the current caretaker of the decision, and the Department provides to the current caretaker, in a letter, the decision and the reasons supporting it within three calendar days of the committee meeting.

(8) A current caretaker not approved as an adoptive resource by the committee may be presented to a central adoption committee upon request of the current caretaker in accordance with the following procedures:

(a) In order to be presented, the current caretaker must provide a letter of request to the child's worker within 10 days of the written notification of the local office's decision.

(b) The local office has the discretion to determine by whom and in what form information about the family will be presented to a central adoption committee. For example, the family's certifier may attend and may use the certification home study.

(c) At the discretion of the local office, the current caretaker may obtain, at no cost to the Department, an adoption home study by a state-licensed private adoption agency holding a contract with the Department for the completion of special needs adoption home studies and may be represented before the committee by the agency. In this case, the caretaker must inform the child's worker by letter within 10 days of the written notification of the committee's decision. To be considered by the committee,

ADMINISTRATIVE RULES

the approved adoption home study must be completed and made available to the committee within time lines established by the local office.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.285, 418.290
Hist.: SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

413-120-0550

Review of the Local Office Permanency/Adoption Committee Decision Regarding the Current Caretaker

(1) Limited Review of Committee Decisions. The decisions provided for in these rules are subject to agency review only as provided in this rule. The agency's decision is final and not subject to a contested case hearing unless specifically provided.

(2) Review at discretion of Assistant Director.

(a) The Department's Assistant Director for Children, Adults and Families or designee (Assistant Director) may, on his or her initiative, review an adoption committee's decision. If there is no request for review, and if the Assistant Director decides to review the decision of an adoption committee, he or she must decide to conduct the review within seven calendar days after the decision of the adoption committee is issued, measured from the date of the committee.

(b) After deciding to review the committee decision, the Assistant Director gives notice to the child's worker, the worker's supervisor, the Service Delivery Area Manager, the adoption workers, and the committee chair.

(3) Scope of Review. The review when requested by someone other than the Assistant Director is limited to a review of the process used to select the committee and the decisions made by the adoption committee.

(4) Only the following people may request a review under this rule:

(a) The child's caseworker, with approval of the case worker's supervisor and SDA manager or designee.

(b) The child.

(c) The child's attorney.

(d) The Court Appointed Special Advocate (CASA) for the child.

(e) A current caretaker who was considered.

(f) A person who was considered but not selected who alleges that placement of the child was denied or delayed because of the location of the individual.

(5) Deadlines. A request to review an adoption committee's decision must be submitted to the Adoption Services Unit Manager or designee and must be received within seven calendar days after the date of the committee.

(6) Decision and Notice of Intent to Review. If the Assistant Director receives a request for a review, the Assistant Director must decide whether to review the decision of the committee within seven calendar days after the deadline described in section (5) of this rule. After deciding whether to review or not to review the committee decision, the Assistant Director gives notice to the requestor, the child's worker, the worker's supervisor, the SDA manager or designee, other adoption workers, and the committee chair.

(7) Assistant Director's Actions. If the Assistant Director gives notice of intent to review, he or she may:

(a) Send the decision to an appropriate committee, with instructions to gather or review information or consider additional issues, and to issue a decision;

(b) Conduct a review of all relevant files and information, issue a decision affirming or changing the committee's decision, and, if appropriate, directing a legal risk placement or adoptive placement; or

(c) Appoint an employee of the Department to conduct a review of all relevant files and information, and make a recommendation to the Assistant Director to affirm or change the committee's decision and, where appropriate, recommend a legal risk placement or adoptive placement.

(8) Assistant Director's Decision is Final. The decision upon review by the Assistant Director is a final order in other than a contested case.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04

.....

Adm. Order No.: CWP 1-2004

Filed with Sec. of State: 1-9-2004

Certified to be Effective: 1-9-04

Notice Publication Date: 10-1-03

Rules Amended: 413-210-0800, 413-210-0806, 413-210-0821

Subject: Some refinements were made to these rules regarding Outdoor Youth Programs. The advisory committee and staff recommended these revisions after a period of applying these rules. The revisions are related to stating values for regulating outdoor youth

programs, licensing requirements related to bonding, insurance, workers compensation and financial stability. Also, a change has been made in the education requirements for outdoor youth program field staff.

Rules Coordinator: Barbara J. Carranza—(503) 945-6649

413-210-0800

Purpose and Applicability of Rules

(1) **Value Statement.** The State of Oregon, through the statutorily required adoption of administrative rules for licensing outdoor youth programs, has determined that the services provided by these programs are an important and valuable resource option for children, youth and families and the continued provision of these services is in the State's interest. Application of the rules is intended to recognize the treatment values of the Outdoor Youth wilderness experience and, to the extent that the required elements of safety and accountability are in place, to facilitate the provision of appropriate wilderness youth treatment programs in Oregon.

(2) **Required Compliance.** Rules 413-210-0800 through 413-210-0883 set forth the Department of Human Services (DHS) requirements for licensing private child caring agencies providing outdoor youth programs, subject to Oregon laws governing private child caring agencies, ORS 418.205 to 418.325 and 418.990 to 418.998 and Oregon laws governing outdoor youth programs, ORS 418.205 to 418.246.

(3) **Additional Required Compliance.** Private child caring agencies providing outdoor youth programs must also comply with OAR 413-210-000 through 0070, 413-210-00140, 413-210-0190- 0250 except that 413-210-0020(2)(c)(A)-(E) shall not apply.

(4) **Severability.** If any court of law finds that any clause, phrase or provision of these rules is illegal or in conflict with any law, this finding shall not affect the validity of the remaining portion of these rules.

(5) **Acceptability.** In some instances there are no common definitions as to degree of acceptability. For purposes of these rules, the determination of compliance or non compliance shall be made by DHS. DHS may at its discretion, but is not required to, consult with the Outdoor Youth Program Advisory Board regarding general issues of acceptability in outdoor youth programs.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.205 - ORS 418.325 & ORS 418.990 - ORS 418.998
Hist.: SOSCF 9-2002, f. & cert. ef. 5-29-02; CWP 1-2004, f. & cert. ef. 1-9-04

413-210-0806

License Required

(1) **License Required.** Unless exempted by Oregon laws governing private child caring agencies, no person or organization shall operate an outdoor youth program in Oregon without a valid license issued by DHS in accordance with OAR 413-210-0800 through 0883.

(2) **Compliance Required.** Any agency which provides the services of an outdoor youth program shall comply with these rules governing outdoor youth programs and OAR 413-210-0010 through 0070; 413-210-0140, 413-210-0190-0250 except that 413-210-0020(2)(c)(A)-(E) shall not apply.

(3) **Inspection.** The outdoor youth program shall provide to DHS representatives upon request access to all of the program's accounts and records.

(4) **Bond Required.** The outdoor youth program shall secure, and keep in effect during the term of the license, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State of Oregon. This insurance shall include personal injury liability, completed operations and contractual liability coverage, and be written on an occurrence basis. Combined single limit per occurrence shall not be less than one million dollars (\$1,000,000). Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). Coverage shall be primary and non-contributory with any other insurance and self-insurance. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the outdoor youth program or its insurer(s) to the Department of Human Services. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of licensure requirements and may be grounds for immediate termination of the license to operate the outdoor youth program. As evidence of the insurance coverages required by this section, the outdoor youth program shall furnish Certificate(s) of Insurance to DHS prior to the issuance of license to the outdoor youth program and at the time of all subsequent renewals. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The outdoor youth program shall pay for all deductibles, self-insured retention and/or self-insurance included hereunder.

ADMINISTRATIVE RULES

(6) **Workers Compensation.** The outdoor youth program shall comply with all provisions of ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The outdoor youth program shall ensure that each of its subcontractors complies with these requirements.

(7) **Financial Stability.** The outdoor youth program shall demonstrate sufficient financial stability and backing to ensure effective and responsible delivery of its services. Consideration of the program's financial stability will be based on its reports using generally accepted accounting practices. The reports should reflect a program with the capacity to meet current and future obligations; reasonably free from debt obligations; and free from onerous liens or bankruptcy proceedings.

(8) Unless otherwise exempt, an outdoor youth program is subject to the requirements of the Interstate Compact for Placement of Children. The program shall have written policy and procedures regarding compliance with Compact as found in ORS 417.200 through 417.260.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.205-418.325 & ORS 418.990-418.998

Hist.: SOSCF 9-2002, f. & cert. ef. 5-29-02; CWP 1-2004, f. & cert. ef. 1-9-04

413-210-0821

Staff

The outdoor youth program will have written policy regarding minimum staff requirements.

(1) **Verification.** The outdoor youth program shall verify qualifications of staff through documentation of minimum requirements for work experience, education and classroom instruction. A program which provides outdoor youth programming as its primary function shall have the following staff:

(2) **Executive Director.** The executive director may also function as the field director if the executive director meets those qualifications. The executive director shall:

(a) Be at least twenty-five (25) years of age;

(b) Have the following qualifications at time of hire:

(A) Five (5) years of paid full time experience in the social services or wilderness field with at least one (1) year in a paid administrative capacity; or

(B) A Bachelor's degree and four (4) years of paid full time experience in the social services or wilderness field with at least one (1) year in a paid administrative capacity; or

(C) A Master's degree and three (3) years of paid full time experience in the social services or wilderness field with at least one (1) year in a paid administrative capacity.

(c) Have knowledge and experience demonstrating competence in the performance or oversight of the following essential job functions: program planning and budgeting, fiscal management, supervision of staff, personnel management, employee performance assessment, data collection, reporting, program evaluation, quality assurance, and developing and maintaining community resources; and

(d) Demonstrate by his or her conduct the competencies required by this rule and compliance with the program policies and procedures implementing these rules; and

(e) Have completed the field training as required by these rules.

(3) **Field Director.** An outdoor youth program shall have a field director who is primarily responsible for the quality of the field activities, coordinates field operation, supervises direct care staff, and manages the field office. The field director shall:

(a) Be at least twenty-five (25) years of age;

(b) Have a minimum of thirty (30) college level semester hours or forty-five (45) quarter hours in recreational therapy or in a related field or one year of outdoor youth program field experience;

(c) Demonstrate knowledge and understanding of applicable licensing rules;

(d) Have completed the field training as required by these rules;

(e) Hold a Wilderness First Responder (WFR) certificate or equivalent; and

(f) Have completed an approved course in non violence crisis intervention.

(4) **Senior Field Staff.** An outdoor youth program shall have a senior field staff working directly with each group of program youths. Senior field staff shall:

(a) Be at least twenty-one (21) years of age;

(b) Have an associate degree or high school diploma or equivalent with thirty (30) college level semester hours or forty-five (45) quarter hours of study or comparable experience and training in a field related to recreation and adventure activities;

(c) Have a minimum of forty (40) twenty-four (24) hour field days of program experience or equivalent experience in outdoor programs documented in the personnel file;

(d) Have completed the field training as required by these rules;

(e) Hold a Wilderness First Responder (WFR) certificate or equivalent; and

(f) Have completed an approved course in non violent crisis intervention.

(5) **Field Staff.** Each field staff member shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a high school diploma, or its equivalent, or comparable experience directly relevant to assigned outdoor youth program responsibilities;

(c) Have completed the field training as required by these rules; and

(d) Be certified to provide cardiopulmonary resuscitation (CPR) and first aid.

(6) **Specific Activity Training.** All staff of the outdoor youth program shall have documented training and experience in conducting any outdoor youth program activities (such as hiking, winter camping, soloing, expeditioning, etc.) he or she is assigned to conduct.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.205-418.325 & ORS 418.990-418.998

Hist.: SOSCF 9-2002, f. & cert. ef. 5-29-02; CWP 1-2004, f. & cert. ef. 1-9-04

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

Adm. Order No.: OMAP 89-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-120-1195

Subject: The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. SB 5548 adjusts the budget for the Department of Human Services (DHS) through fund shifts, program reductions and restoration of some services reduced as part of the budget reductions from House Bill 5100 (2002 fifth special session). DHS is authorized to provide State-funded reimbursement for limited prescription drugs to "certain individuals previously participating in the Medically Needy program and receiving prescription drugs to support organ transplants and remediate HIV-positive symptoms." Qualified individuals identified with specific health related conditions as outlined in the committee report for Senate Bill 5548, will be eligible for a State-funded limited prescription drug benefit. The program was originally funded through June 30, 2003 with an extension until December 31, 2003. This program is extended until the Department obtains approval from the Centers for Medicare and Medicaid Services (CMS), for a new program to replace this State-funded only program.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1195

SB 5548 Population

Effective for services rendered on or after January 1, 2004.

(1) Certain individuals previously participating in the OSIP-MN Medically Needy Program as of January 31, 2003, and who are identified by DHS with specific health-related conditions as outlined in the Joint Ways and Means budget note accompanying Senate Bill 5548 (2003) shall be referred to as SB 5548 clients:

(2) SB 5548 clients are eligible for a State-funded, limited, prescription drug benefit for covered drugs described in subsection (3) of this rule;

(3) Eligibility for, and access to, covered drugs for SB 5548 clients:

(a) SB 5548 clients must have been participating in the former OSIP-MN Medically Needy Program as of January 31, 2003, and as of that date had a medical diagnosis of HIV or organ transplant status;

(b) SB 5548 clients receiving anti-retrovirals and other prescriptions necessary for the direct support of HIV symptoms:

(A) Must agree to participate in the DHS CareAssist Program in order to obtain access to this limited prescription drug benefit; and

(B) Prescriptions are limited to those listed on the CareAssist Formulary which can be found at www.dhs.state.or.us/publichealth/hiv/careassist/.

(c) SB 5548 clients receiving prescriptions necessary for the direct support of organ transplants are limited to:

ADMINISTRATIVE RULES

(A) Drug coverage includes any Medicaid reimbursable immunosuppressive, anti-infectives or other prescriptions necessary for the direct support of organ transplants. Some drug classes are subject to restrictions or limitations based upon the Practitioner-Managed Prescription Drug Plan, OAR 410-121-0030.

(3) Reimbursement for covered prescription drugs is limited by the terms and conditions described in this rule. This limited drug benefit provides State-funded reimbursement to pharmacies choosing to participate according to the terms and conditions of this rule:

(a) SB 5548 clients will not be sent a medical ID card, however they will be sent a letter from the Department, which will document their eligibility for this limited drug benefit;

(b) Retail pharmacies choosing to participate will be reimbursed for covered prescription drugs for the direct support of organ transplants described in subsection (3)(c) of this rule at the lesser of billed, Average Wholesale Price (AWP) minus 14% or Oregon Maximum Allowable Cost (OMAC), plus a dispensing fee of \$3.50;

(c) DHS pharmacy benefits manager, First Health, will process retail pharmacy drug benefit reimbursement claims for SB 5548 clients;

(d) Mail order reimbursement will be subject to DHS contract rates;

(e) Prescription drugs through the CareAssist program will be subject to the DHS contract rates;

(f) Reimbursement for this limited drug benefit is not subject to the following rules:

(A) 410-120-1230 and 1235, Client Copayments;

(B) 410-121-0300, Federal Upper Limit (FUL) for prescription drugs. Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 28-2003(Temp), f. & cert. ef. 4-1-03 thru 9-1-03; OMAP 44-2003, f. & cert. ef. 6-30-03; OMAP 45-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 89-2003, f. 12-30-03 cert. ef. 1-1-04

.....

Adm. Order No.: OMAP 90-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-125-0141, 410-125-0181, 410-125-0195

Subject: The Hospital Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules 410-125-0141, 410-125-0181 and 410-125-0195 are revised to reinstate the hospital reimbursement rate in effect prior to March 2003. Rules OAR 410-125-0181 and 410-125-0195 are revised to reinstate rates for outpatient services. OAR 410-125-0141 has two components; reinstatement of DRG hospital rate and the reinstatement of outlier payments to all hospitals for all clients. Implementation of the outlier reinstatement is contingent upon CMS approval.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0141

DRG Rate Methodology

(1) Diagnosis Related Groups:

(a) Diagnosis Related Groups (DRG) is a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM);

(b) The DRG classification methodology assigns a DRG category to each inpatient service, based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status.

(2) Medicare Grouper: The Medicare Grouper is the software used to assign individual claims to a DRG category. Medicare revises the Grouper program each year in October. OMAP uses the Medicare Grouper program in the assignment of inpatient hospital claims. The most recent version of the Medicare grouper will be installed each year within 90 days of the date it is implemented by Medicare. Where better assignment of claims is achieved through changes to the grouper logic, OMAP may modify the logic of the grouper program. OMAP will work with representatives of hospitals that may be affected by grouper logic changes in reaching a cooperative decision regarding changes. OMAP DRG weight tables can be found on the DHS web site.

(3) DRG Relative Weights:

(a) Relative weights are a measure of the relative resources required in the treatment of the average case falling within a specific DRG category;

(b) For most DRGs, OMAP establishes a relative weight based on federal Medicare DRG weights. For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs, Oregon Title XIX fee-for-service claims

history is used. To determine whether enough claims exist to establish a reasonable weight for each state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRG, OMAP uses the following methodology: Using the formula $N = \frac{Z \cdot S}{R}$ where $Z = 1.15$ (a 75% confidence level), S is the standard deviation, and $R = 10\%$ of the mean. OMAP determines the minimum number of claims required to set a stable weight for each DRG (N must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, OMAP sets a relative weight using:

(A) OMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the OMAP Title XIX caseload.

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the OMAP Title XIX population in that DRG, the weight derived from OMAP Title XIX claims history is used instead of the externally-derived weight for that DRG.

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State-specific relative weights shall be adjusted, as needed, as determined by OMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighting of DRGs or the addition or modification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Indexed: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) Operating Costs:

(a) For the purposes of determining costs for all hospitals except for Type A, Type B, and Critical Access Hospitals, costs are defined as costs derived from the Medicare cost reports for the hospital FY ending during the State FY 87 (July 1, 1986 through June 30, 1987) adjusted to the Medicaid mix of services and trended forward using Data Resources Inc. (DRI) inflation factors;

(b) For the purposes of determining each hospital's unit value for services beginning July 1, 1991, the following procedure was used:

(A) The Medicaid cost per discharge was derived from each hospital's Medicare cost report as described above, and adjusted to the Medicaid mix of services. The costs of capital and direct and indirect medical education were deducted from this amount (capital and education costs were taken from the Medicare cost report for the hospital's fiscal year ending during the State 1987 Fiscal Year). The resultant amount is referred to as the "operating cost" per discharge;

(B) The operating cost per discharge as described in (5)(A) of this rule (Operating Costs) for each hospital was adjusted in order to bring all hospitals to the same 1987 mid-point, using CMS-DRI inflation adjustments. The operating cost was then inflated forward to the mid-point of Oregon Fiscal Year 1992 (January, 1992) using the compounded HCFA-DRI inflation factor.

(6) Unit Value: The Unit Value for each hospital effective for services beginning on or after July 1, 1991, was established as follows:

(a) The Oregon Fiscal Year 1992 operating cost per discharge was multiplied by the ratio of the projected 1992 CMI to the 1987 CMI to adjust for changes in the CMI between 1987 and the CMI for 1992;

(b) The CMI-trend adjusted cost per discharge is divided by the hospital's projected 1992 CMI in order to compare all hospitals as though they had a CMI of 1.0;

(c) All hospitals, including Type A, Type B, and Critical Access hospitals, are ranked by their CMI adjusted cost per discharge;

(d) Each hospital below the 70th percentile is assigned a Preliminary FY 1992 Unit Value equal to its CMI adjusted operating costs per discharge described in (5), Operating Costs. This preliminary FY 1992 Unit Value is reduced by the cost outlier payments which had been projected for FY 1992 (the projections which were the basis for the FY 1992 prospective rates). This preliminary unit value is further reduced by 2.45% to get the Final Unit Value for FY 1992. This shall also be the hospital's Unit Value for the period beginning December 1, 1993;

(e) Each hospital at or above the 70th percentile is assigned a Preliminary FY 1992 Unit Value equal to the Preliminary Unit Value of the hospital at the 70th percentile. This Preliminary FY 1992 Unit Value is adjusted downwards as required in order that the outlier payments which had been projected for FY 1992 combined with the Operational Payment will not exceed the hospital's FY 1992 Operating Cost per Discharge as described in (5), of this rule. This preliminary unit value is further reduced by 2.45% to get the final Unit Value for FY 1992. This shall also be the hospital's Unit Value for the period beginning December 1, 1993;

(f) For services beginning on or after October 1, 1996 the Unit Values for each hospital shall be adjusted at an inflation factor determined by the

ADMINISTRATIVE RULES

Department in consideration of inflationary trends, hospital productivity and other relevant factors.

(g) Effective for services provided on or after March 10, 2003. The Unit Value for each hospital shall be reduced by 12 percent. The Unit Value will be calculated as specified in (6)(a)–(f) and reducing this amount by 12 percent.

(7) DRG Payment: The DRG payment to each hospital is calculated by multiplying the Relative Weight for the DRG by the Hospital-Specific Unit Value. This is also referred to as the Operational Payment.

(8) Cost Outlier Payments:

(a) Cost outlier payments are an additional payment made to disproportionate share qualifying hospitals. For dates of service effective March 10, 2003 payment will be at the time a claim is processed for exceptionally costly services or exceptionally long lengths of stay provided to Title XIX and SF (State Facility) clients under one year of age in compliance with Sec. 1923 (42 U.S.C. 1396r-4).

(b) Effective for services beginning on or after July 1, 1991, the calculation to determine the cost outlier payment for all hospitals is as follows:

(A) Non-covered services (such as ambulance charges) are deducted from billed charges;

(B) The remaining billed charges are converted to hospital-specific costs using the hospital's cost-to-charge ratio derived from the most recent audited Medicare cost report and adjusted to the Medicaid case load;

(C) If the hospital's net costs as determined above are greater than 300 percent of the DRG payment for the admission and are greater than \$25,000, an additional cost outlier payment is made;

(D) Costs which exceed the threshold (\$25,000 or 300% of the DRG payment, whichever is greater) are reimbursed using the following formula:

- (i) Billed charges less non-covered charges, times;
- (ii) Hospital-specific cost-to-charge ratio, equals;
- (iii) Net Costs, minus;
- (iv) 300% of the DRG or \$25,000 (whichever is greater), equals;
- (v) Outlier Costs, times;
- (vi) Cost Outlier Percentage, (cost outlier percentage is 50%), equals;
- (vii) Cost Outlier Payment.

(E) Third party reimbursements are deducted from the OMAP calculation of payable amount;

(F) When hospital cost reports are audited, an adjustment will be made to cost outlier payments to reflect the actual Medicaid hospital-specific cost-to-charge ratio during the time cost outlier claims were incurred. The cost-to-charge ratio in effect for that period of time will be determined from the audited Medicare Cost Report and OMAP 42, adjusted to reflect the Medicaid mix of services.

(9) Capital:

(a) The capital payment is a reimbursement to in-state hospitals for capital costs associated with the delivery of services to Title XIX, non-Medicare persons. The Office of Medical Assistance Programs uses the Medicare definition and calculation of capital costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Capital cost per discharge is calculated as follows:

(A) The capital cost proportional to the number of Title XIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 is divided by the number of Title XIX non-Medicare discharges. This results in the Title XIX Capital Cost per discharge. The Title XIX capital cost per discharge for each hospital above the 50th percentile will be set at the 50th percentile for Oregon hospitals receiving DRG reimbursement;

(B) The Title XIX Capital Cost per discharge for this period is inflated forward to Oregon FY 1992, using the compounded HCFA-DRI market basket adjustment.

(c) Capital Payment Per Discharge:

(A) The number of Title XIX discharges paid during the quarter for each hospital is multiplied by the Title XIX cost per discharge from 1987 trended forward as described above. This determines the current quarter's capital costs. Reimbursement is made at 85% of this amount. Payment is made within thirty days of the end of the quarter;

(B) The capital payment per discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.

(10) Direct Medical Education:

(a) The direct medical education payment is a reimbursement to in-state hospitals for direct medical education costs associated with the delivery of services to Title XIX eligible persons. The Office of Medical Assistance Programs uses the Medicare definition and calculation of direct medical education costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Direct Medical Education cost per discharge is calculated as follows:

(A) The direct medical education cost proportional to the number of Title XIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 is divided by the number of Title XIX non-Medicare discharges. This is the Title XIX Direct Medical Education Cost per discharge;

(B) The Title XIX Direct Medical Education cost per discharge for this period is inflated forward to January 1, 1992, using the compounded HCFA-DRI market basket adjustment.

(c) Direct Medical Education Payment Per Discharge:

(A) The number of Title XIX non-Medicare discharges from each hospital for the quarterly period is multiplied by the inflated Title XIX cost per discharge. This determines the current quarter's Direct Medical Education costs. This amount is then multiplied by 85%. Payment is made within thirty days of the end of the quarter;

(B) The Direct Medical Education Payment Per Discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.

(11) Indirect Medical Education:

(a) The indirect medical education payment is a reimbursement made to in-state hospitals for indirect medical education costs associated with the delivery of services to Title XIX non-Medicare clients;

(b) Indirect medical education costs are those indirect costs identified by Medicare as resulting from the effect of teaching activity on operating costs;

(c) Indirect medical education payments are made to in-state hospitals determined by Medicare to be eligible for such payments. The indirect medical education factor in use by Medicare for each of these eligible hospitals at the beginning of the State's fiscal year is the Office of Medical Assistance Program's indirect medical education factor. This factor is used for the entire Oregon fiscal year;

(d) The calculation for the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the Unit Value, multiplied by the Indirect Factor equals Indirect Medical Education Payment;

(e) This determines the current quarter's Indirect Medical Education Payment. Indirect medical education payments are made quarterly to each eligible hospital. Payment for indirect medical education costs will be made within thirty days of the end of the quarter.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-15-120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0006, 461-015-0020 & 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-570, 461-015-0590, 461-105-0600 & 461-015-0610; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 36-1990(Temp), f. 10-29-90, cert. ef. 11-1-90; HR 42-1990, f. & cert. ef. 11-30-90; HR 3-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91; Renumbered from 410-125-0840, 410-125-0880, 410-125-0900, 410-125-0920, 410-125-0960 & 410-125-0980; HR 35-1993(Temp), f. & cert. ef. 12-1-93; HR 23-1994, f. 5-31-94, cert. ef. 6-1-94; HR 11-1996(Temp), f. & cert. ef. 7-1-96; HR 22-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 45-1998, f. & cert. ef. 12-1-98; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04

410-125-0181

Non-Contiguous and Contiguous Area Out-of-State Hospitals — Outpatient Services

Non-contiguous area hospitals are out-of-state hospitals located more than 75 miles outside the Oregon border. Contiguous area hospitals are out-of-state hospitals located less than 75 miles outside the Oregon border. Unless such hospitals have an agreement with OMAP regarding reimbursement for specialized services, these hospitals will be reimbursed as follows:

(1) Laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services will be reimbursed under an OMAP fee schedule.

(2) All other outpatient services will be reimbursed at 50 percent of billed charges. There is no cost settlement.

Stat. Auth.: ORS 409

Stats. Implemented: 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-

ADMINISTRATIVE RULES

0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0540; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91; Renumbered from 410-125-0780; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 58-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04

410-125-0195

In State DRG Hospitals

(1) The interim reimbursement for laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services is the OMAP fee schedule.

(2) Settlement reimbursement:

(a) For Title XIX/Title XXI clients; an adjustment to 59 percent of outpatient costs is made during the cost settlement process.

(b) For GA clients; outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91; Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04

Adm. Order No.: OMAP 91-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-127-0080

Subject: The Home Health Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. OAR 410-127-0080 is amended to centralize prior-payment authorizations of home health services.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-127-0080

Payment Authorization

Payment authorization (PA) is approval by the responsible unit for services:

(1) Payment authorization is required for home health services as indicated in the Revenue Code section of the Home Health Care Services provider guide. For services requiring authorization, providers must contact the responsible unit for authorization within five working days following initiation or continuation of services. The FAX or postmark date on the request will be honored as the request date. It is the provider's responsibility to obtain payment authorization.

(2) A payment authorization number must be present on all claims for home health services which require payment authorization or the claim will be denied.

(3) An initial authorization is given for 60 days. Each continuation of an authorization is for a period of 60 days.

(4) Where to request payment authorization:

(a) Managed health care clients — Services for clients identified on their Office Medical Assistance Programs (OMAP) Medical Care

Identification as having an "OMAP Contracted Plan" will be authorized by the plan. Contact the plan to determine their procedures;

(b) Children, Adults and Families (CAF) clients (formerly known as Adult and Family Services and State Office for Services to Children and Families): Services for clients identified on Medical Care Identification as AFS or CSD clients are authorized by OMAP;

(c) Seniors and People with Disabilities (SPD) clients (formerly Senior and Disabled Services Division) will be authorized by OMAP;

(d) Medically Fragile Children's Unit (MFCU) clients: Services for clients identified as Medically Fragile Children will be authorized by MFCU;

(e) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, authorization must be obtained from the MCM Contractor prior to the initiation of services. For FFS MCM clients, OMAP will not reimburse for a service that requires payment authorization if the service is provided prior to receiving authorization from the MCM Contractor.

(A) For enteral/parenteral IV services, call OMAP;

(B) Services for clients utilizing a Group 2 pressure-reducing support service will be authorized by OMAP.

(5) Each payment authorization must include:

(a) Client's name;

(b) Medicaid recipient ID number;

(c) Revenue codes;

(d) Date range;

(e) Frequency of service;

(f) Performing provider number;

(g) Medical justification;

(h) Diagnosis and Primary ICD-9-CM code; (as indicated as the reason for the request);

(i) Goals and Objectives;

(j) Assessment of availability of other resources to care for the client.

(6) OASIS documentation does not need to be submitted with PA request.

(7) To continue an authorization, submit the most current visit notes and justification for continuing services.

(8) Changing a payment authorization — Requests to change an existing payment authorization should be mailed or FAXed to the responsible unit which issued the original authorization. Include the following information:

(a) Client's name;

(b) Medicaid recipient ID number;

(c) Payment authorization number;

(d) Change requested;

(e) Visit notes to support the change.

(9) Payment authorization does not guarantee eligibility or payment. It is the provider's responsibility to verify eligibility on the date of service.

(10) Payment authorization does not relieve the provider of the responsibility to follow all applicable rules regarding the provision of services.

(11) For skilled nursing visits involving home enteral/parenteral nutrition and IV services, refer to the OMAP Home Enteral/Parenteral Nutrition and IV Services provider guide.

(12) For skilled nursing visits involving a Group 2 pressure-reducing support surface, refer to the OMAP Durable Medical Equipment and Medical Supplies provider guide.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 682, f. 7-19-74, ef. 8-11-74; PWC 798, f. & ef. 6-1-76; AFS 8-1979, f. 3-30-79, ef. 4-1-79; Renumbered from 461-019-0410 by Chapter 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 6-1986, f. & ef. 4-24-86; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 411-075-0005; HR 12-1991, f. & cert. ef. 3-1-91; HR 30-1992(Temp), f. & cert. ef. 9-25-92; HR 2-1993, f. 2-19-93, cert. ef. 2-20-93; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 15-1999, f. & cert. ef. 4-1-99; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 91-2003, f. 12-30-03 cert. ef. 1-1-04

Adm. Order No.: OMAP 92-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-131-0160

Subject: The Physical and Occupational Therapy Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients.

ADMINISTRATIVE RULES

OAR 410-131-0160 is amended to centralize prior/payment authorizations of Physical and Occupational Therapy services.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-131-0160

Payment Authorization

(1) Payment authorization is approval by the Office of Medical Assistance Programs (OMAP), the Medically Fragile Children's Unit (MFCU), the OMAP Case Management Contractor, or the Managed Care Organizations (MCOs) for services.

(2) Payment authorization is required for physical and occupational therapy services as indicated in the "Occupational and Physical Therapy Codes" section of the Physical and Occupational Therapy rules. For services requiring authorization from OMAP or MFCU, and for continuation of those services, providers must contact OMAP or MFCU for authorization within five working days following initiation of services. For services requiring payment authorization from the OMAP Case Management Contractor, authorization must be obtained prior to the initiation of services. For fee-for-service case management clients, OMAP will not reimburse for a service that requires payment authorization if provided prior to receiving authorization from the OMAP Case Management Contractor. Services for clients enrolled in a Managed Care Organization (MCO) will be authorized by the MCO. Contact the MCO to determine their procedures.

(3) If service is provided prior to receiving authorization, the provider may be at risk for denial of authorization. It is the provider's responsibility to obtain payment authorization. The FAX or postmark date is recognized by OMAP as the date of request.

(4) A payment authorization number must be present on all claims for occupational and physical therapy services that require payment authorization or the claim will be denied.

(5) Payment authorization does not guarantee eligibility or payment. It is the provider's responsibility to check for eligibility on the date of service.

(6) Payment authorization does not relieve the provider of the responsibility to follow all applicable rules regarding the provision of services.

(7) Services for clients with both Medicare and Medical Assistance Program coverage will require payment authorization from the beginning of services.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 706, f. 1-2-75, ef. 2-1-75; PWC 760, f. 9-5-75, ef. 10-1-75; AFS 46-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 98-1982, f. 10-25-82, ef. 11-1-82; AFS 14-1984(Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; AFS 63-1987, f. 12-30-87, ef. 4-1-88; HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; Renumbered from 461-023-0015; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 92-2003, f. 12-30-03 cert. ef. 1-1-04

Adm. Order No.: OMAP 93-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-132-0100

Subject: The Private Duty Nursing Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. OAR 410-132-0100 is amended to centralize prior/payment authorizations of private duty nursing services.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-132-0100

Prior Authorization

(1) Payment may be made only for private duty nursing services only when authorized prior to initiation of services. It is the provider's responsibility to obtain prior authorization.

(2) The requesting provider must provide the following information in order to obtain prior authorization:

(a) Client's name and recipient ID number;

(b) Performing provider name and Office of Medical Assistance Programs (OMAP) provider number;

(c) Physician's orders for service must be dated within seven days prior to the date of request;

(d) Physician's name and provider number;

(e) Diagnosis with the ICD-9-CM codes to their highest specificity as supplied by the physician;

(f) Procedure codes;

(g) Date range of services;

(h) Frequency of service;

(i) Medical justification for services requested;

(j) The plan of care with short-term goals, long-term goals and objectives including time-lines for meeting the goals and objectives, the plan of care dated within one week of date of request;

(k) Usual and customary charge;

(l) A comprehensive assessment must be submitted with each request for private duty nursing shift care;

(m) A completed Private Duty Nursing Acuity Grid;

(n) A completed Psychosocial Grid, if needed.

(3) Prior authorization does not guarantee eligibility or payment. It is the provider's responsibility to check for the client's eligibility on the date of service and to follow all applicable rules regarding provision of service.

(4) Providers must request payment authorization for services provided for an emergency medical service on the first business day following the emergency service. This request must include all information needed to request prior authorization, and clear medical justification for the retroactive authorization.

(5) To extend an ongoing authorization, the following must be submitted at least 7 days prior to the expiration of the current prior authorization. Extension of authorization requires:

(a) Daily nursing notes from the past month;

(b) Flowsheets from the past month;

(c) Updated plan of care;

(d) Progress reports;

(e) Physician's orders for services must be dated within seven days of date of request;

(f) Recent significant clinical findings from physician;

(g) Recent clinic summaries;

(h) A current (within one week of request) completed Private Duty Nursing Acuity Grid (OMAP 591).

(6) To obtain eligibility status information:

(a) Check the client's current Medical Care Identification. An explanation of eligibility and coverage messages shown on the Medical Care Identification is included in the General Rules; or

(b) Call Automated Information System (AIS).

(7) Where to request prior authorization:

(a) Managed Health Care (MHC) Clients: Services for clients identified on their OMAP Medical Care Identification as having an "OMAP Contracted Plan" will be authorized by the plan. Contact the plan to determine their procedures;

(b) Adult and Family Services (AFS) and State Office for Services to Children and Families (SCF) Clients: Services for clients identified on the Medical Care Identification as AFS and SCF (shown on the Medical ID as CSD) will be authorized by OMAP;

(c) SDSD Clients:

(A) Those services for clients identified on the Medical Care Identification as Senior and Disabled Services Division (SDSD) clients will be authorized by OMAP;

(d) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, authorization must be obtained from the MCM Contractor prior to the initiation of services. For FFS MCM clients, OMAP will not reimburse for a service that requires payment authorization if the service is provided prior to receiving authorization from the MCM Contractor.

(e) Medically Fragile Children's Unit Clients. Services for clients identified by the Department as Medically Fragile Children will be authorized by MFCU.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 681, f. & ef. 7-17-74; PWC 759, f. 9-5-75, ef. 10-1-75; PWC 799, f. & ef. 6-1-76; AFS 43-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 9-1983, f. 2-17-83, ef. 3-2-83; AFS 14-1984(Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; HR 9-1991, f. 1-28-91, cert. ef. 3-1-91; Renumbered from 461-019-0210; HR 6-1997, f. & cert. ef. 2-19-97; OMAP 7-1999, f. 3-4-99, cert. ef. 4-1-99; OMAP 16-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 93-2003, f. 12-30-03 cert. ef. 1-1-04

Adm. Order No.: OMAP 94-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Amended: 410-141-0480, 410-141-0500, 410-141-0520

ADMINISTRATIVE RULES

Subject: The Oregon Health Plan (OHP) Services program rules govern Office of Medical Assistance Programs payment for services provided to clients. Rule 410-141-0520 incorporates in rule by reference the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List). Rule 410-141-0520 was temporarily revised to incorporate the most current updates to the Prioritized List, effective October 1, 2003 and include the associated Table 141-0520-1 to include certain procedure code ranges that continued to be funded. Rules 410-141-0480 and 410-141-0500 were revised to reflect this information. This is to permanently revise the rules.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0480

Oregon Health Plan Benefit Package of Covered Services (Effective for Services Rendered On or After October 1, 2003)

(1) OMAP Members are eligible to receive, subject to Section (12) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 section (4) for funded line coverage information.

(2) Diagnostic Services that are necessary and reasonable to diagnose the presenting condition of the OMAP Member are covered services, regardless of the placement of the condition on the Prioritized List of Health Services.

(3) Comfort care is a covered service for an OMAP Member with a Terminal Illness.

(4) Preventive Services promoting health and/or reducing the risk of disease or illness are covered services for OMAP Members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors. (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(5) Ancillary Services are covered, subject to the service limitations of the Medical Assistance Program rules and Provider guides, when the services are Medically or Dentally Appropriate for the treatment of a covered condition-treatment pair, or the provision of ancillary services will enable the OMAP Member to retain or attain the capability for independence or self-care. A list of Ancillary Services is included in the Prioritized List of Health Services, adopted in OAR 410-141-0520.

(6) The provision of Chemical Dependency Services must be in compliance with the Office of Mental Health and Addiction Services (OMHAS) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the Chemical Dependency Prepaid Health Plan Standards in the Fully Capitated Health Plan Contract.

(7) In addition to the coverage available under section (1) of this rule, an OMAP Member may be eligible to receive, subject to section (12) services for treatments which are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP Client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded co-morbid conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by OMAP for fee-for-service OHP Clients or a finding by the Prepaid Health Plan (PHP) for OMAP Members that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

(i) Treating physician opinion;

(ii) Medical research;

(iii) Community standards; and

(iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any OMAP Member, especially an OMAP Member with a disability or with a

comorbid condition, Providers must determine whether the OMAP Member has a funded condition and paired treatment that would entitle the OMAP Member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD-9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(8) OMAP shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of covered services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, OMAP shall make a retrospective determination under this subsection, provided OMAP is notified of the emergency situation during the next business day. If OMAP denies a requested service, OMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(9) PHPs shall provide written notification of PHP determinations related to sections (1)-(7)(a) and (b) of this rule when such determinations result in a denial of requested services or denial of payment for services which have been obtained: If, as the result of a complaint or request for Administrative Hearing, OMAP determines a service is covered and the Oregon Health Plan Client is enrolled in a PHP that is required to provide the service as a Capitated Service, OMAP shall, within five working days of making a decision, provide written notification to the PHP.

(10) Oregon Health Plan Clients or Practitioners, on behalf of Oregon Health Plan Clients, may request an Administrative Hearing to appeal OMAP decisions made related to section (7) of this rule:

(a) Requests for Administrative Hearings may be made orally to the OMAP Medical Director or his or her designee when an OMAP Member's condition warrants an expedited decision, OMAP shall respond in a timely manner determined by the nature of the circumstance and in no event greater than ten (10) working days after receiving notice of the oral request for expedited decision;

(b) Requests for Administrative Hearing, appealing OMAP decisions, other than those subject to section (10)(a), must be written. Written Appeals may be made through the client Administrative Hearings process or the Provider Appeals process and shall be responded to within the timelines of those processes in accordance with OAR 410-120-1560 through 410-120-1840.

(11) If a condition/treatment pair is not on the Health Services Commission's list of prioritized services and OMAP determines the condition/treatment pair has not been identified by the Commission for inclusion on the list, OMAP shall make a coverage decision in consultation with the Health Services Commission.

(12) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients.

(13) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those OMAP Members with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure as outlined below:

(a) Children under three years old with dental needs determined by the dentist or oral surgeon as requiring general anesthesia;

(b) Children over three years old requiring substantial dental care determined by the dentist or oral surgeon as requiring general anesthesia that may protect the child from unnecessary trauma;

(c) OMAP Members with physical, mental or medically compromising conditions;

(d) OMAP Members with dental needs for whom local anesthesia is ineffective because of acute infection, anatomic variations, or allergy;

(e) Acute situational anxiety, fearfulness, extremely uncooperative or uncommunicative client with dental needs, determined by the dentist or oral surgeon, sufficiently important that dental care cannot be deferred;

(f) OMAP Members who have sustained extensive orofacial and dental trauma; or

(g) OMAP Members with dental needs who otherwise would not obtain necessary dental care when, in the decision of the dentist or oral surgeon, the need for dental treatment outweighs the risks of general anesthesia. The OMAP Member's dental record must clearly document the justification for the level of anesthesia and why, in the estimation of the dentist or oral surgeon, the treatment in an office setting is not possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP

ADMINISTRATIVE RULES

17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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

410-141-0500

Excluded Services and Limitations for Oregon Health Plan Clients and/or OMAP Members (Effective for services rendered on or after October 1, 2003)

(1) The following services are excluded:

(a) Any service or item identified in OAR 410-120-1200 and 410-120-1210, Excluded Services and Limitations. Services that are excluded under the Oregon Medical Assistance program shall be excluded under the Oregon Health Plan;

(b) Any service or item identified in the appropriate provider guides as a non-covered service, unless the service is identified as specifically covered under the Oregon Health Plan Administrative Rules;

(c) Any treatment, service, or item for a condition that is not included on the funded lines of the Prioritized List of Health Services except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (7)(d) Services that are currently funded on the Prioritized List of Health Services that are not included in the OHP Client's and/or OMAP Member's OHP benefit package, are excluded.

(e) Any treatment, service, or item for a condition which is listed as a Condition/Treatment Pair in both currently funded and non-funded lines where the qualifying description of the diagnosis appears only on the non-funded lines of the Prioritized list of Health Services, except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (7);

(f) Diagnostic services not reasonably necessary to establish a diagnosis for a covered or non-covered condition/ treatment pair;

(g) Services requested by Oregon Health Plan (OHP) Clients and/or OMAP Member's in an emergency care setting which after a screening examination are determined not to meet the definition of Emergency Services and the provisions of 410-141-0140;

(h) Services provided to an Oregon Health Plan Client and/or OMAP Member outside the territorial limits of the United States, except in those instances in which the country operates a Medical Assistance (Title XIX) program;

(i) Services or items, other than inpatient care, provided to an Oregon Health Plan Client and/or OMAP Member who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, per OAR 410-141-0080(2)(b)(G);

(j) Services received while the OMAP Member is outside the Contractor's Service Area that were either:

(A) Not authorized by the OMAP Member's Primary Care Provider;

or

(B) Not urgent or Emergency Services, subject to the OMAP Member's Appeal rights, that the OMAP Member was outside Contractor's Service Area because of circumstances beyond the OMAP Member's control. Factors to be considered include but are not limited to death of a family member outside of Contractor's Service Area.

(2) The following services are limited or restricted:

(a) Any service which exceeds those that are Medically Appropriate to provide reasonable diagnosis and treatment or to enable the Oregon Health Plan Client to attain or retain the capability for independence or self-care. Included would be those services which upon medical review, provide only minimal benefit in treatment or information to aid in a diagnosis;

(b) Diagnostic Services not reasonably required to diagnose a presenting problem, whether or not the resulting diagnosis and indicated treatment are on the currently funded lines under the Oregon Health Plan Prioritized List of Health Services;

(c) Services that are limited under the Oregon Medical Assistance program as identified in OAR 410-120-1200 and 410-120-1210, Excluded Services and Limitations. Services that are limited under the Oregon Medical Assistance program shall be limited under the Oregon Health Plan.

(3) In the case of non-covered condition/treatment pairs, Providers shall ensure that Oregon Health Plan Clients are informed of:

(a) Clinically appropriate treatment that may exist, whether covered or not;

(b) Community resources that may be willing to provide non-covered services;

(c) Future health indicators that would warrant a repeat diagnostic visit.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 18-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 18-1997, f. 7-11-97, cert. ef. 7-12-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 33-2003, f. & cert. ef. 4-15-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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

410-141-0520

Prioritized List of Health Services (Effective for services rendered on or after October 1, 2003)

(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, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The most current list, dated October 1, 2003, is available 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 03-05 Prioritized List, effective October 1, 2003 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 Prioritized List effective October 1, 2003 is in effect and condition/treatment pairs through line 549 are funded.

(5) Pending full CMS approval of the October 1, 2003 Prioritized List, the Prioritized List effective April 1, 2003 through September 30, 2003 remains in effect for the limited purpose of insuring that condition/treatment pairs on lines 1 – 558 that are not on the October 1, 2003 Prioritized List continue to be funded until CMS approval is obtained. Refer to Table 141-520-1 for specific information. [Table not included. See ED. NOTE.] The Prioritized List is generated and maintained by HSC. The Prioritized List effective April 1, 2003 through September 30, 2003, incorporated into this rule by reference, is available 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.

(6) Effective January 1, 2004 CMS has given full approval of the October 1, 2003 Prioritized List and will be posted on the HSC website listed in section (5). Table 141-0520-1 listing covered benefits for services provided on or after January 1, 2004 will no longer be covered.

[ED. NOTE: Tables 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. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-03; 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

Department of Human Services, Mental Health and Developmental Disability Services Chapter 309

Adm. Order No.: MHD 9-2003

Filed with Sec. of State: 12-29-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Repealed: 309-041-0300, 309-041-0305, 309-041-0310, 309-041-0315, 309-041-0320, 309-041-0375, 309-041-0400, 309-041-0405, 309-041-0410, 309-041-0415, 309-041-0435, 309-041-0445, 309-041-0450, 309-041-0455, 309-041-0460, 309-041-0465, 309-041-0470, 309-041-0475, 309-041-0480, 309-048-0000, 309-048-

ADMINISTRATIVE RULES

0005, 309-048-0010, 309-048-0015, 309-048-0020, 309-048-0025, 309-048-0030, 309-048-0035

Subject: These rulemaking actions implement permanent adoption of Community Development Disability Programs rules. These amendments are taken to: a) consolidate current rules governing the operation of community developmental disability services; b) incorporate requirements for services funded in previous biennia such as regional crisis services, quality assurance activities and relations with Support Services Brokerages; c) clarify services coordinator and support specialist roles and responsibilities in light of new Medicaid Waiver for Support Services for adults with developmental disabilities and the Staley Lawsuit Settlement Agreement; d) implement changes relating to individual support plans for individuals receiving comprehensive services; e) eliminate requirements regarding priority population and changes to a requirement for monitoring based on need and living situation; and f) incorporate quality assurance systems provided for in Oregon's response to the CMS Regional Protocol for Review of Home and Community Based Waiver.

Rules Coordinator: Lynda Dyer—(503) 945-6398

.....

Adm. Order No.: MHD 10-2003

Filed with Sec. of State: 12-29-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Repealed: 309-049-0030, 309-049-0035, 309-049-0040, 309-049-0045, 309-049-0050, 309-049-0055, 309-049-0060, 309-049-0065, 309-049-0070, 309-049-0075, 309-049-0080, 309-049-0085, 309-049-0090, 309-049-0095, 309-049-0100, 309-049-0105, 309-049-0110, 309-049-0115, 309-049-0120, 309-049-0130, 309-049-0135, 309-049-0140, 309-049-0145, 309-049-0150, 309-049-0155, 309-049-0160, 309-049-0165, 309-049-0170, 309-049-0175, 309-049-0180, 309-049-0185, 309-049-0190, 309-049-0193, 309-049-0195, 309-049-0200, 309-049-0205, 309-049-0207, 309-049-0210, 309-049-0215, 309-049-0220, 309-049-0225

Subject: These rulemaking actions implement permanent adoption of Comprehensive 24-Hour Residential Services For Children And Adults With Developmental Disabilities rules. These amendments are taken to: a) move rules governing 24-Hour Residential Services from Chapter 309 to Chapter 411 to better reflect the organizational structure within the Department; b) implement system improvements by updating rule language to be consistent with current practices and Oregon's response to the CMS Regional Protocol for Review of Home and Community Based Waiver Services; and c) strengthen the Department's ability to take sanctioning activity.

Rules Coordinator: Lynda Dyer—(503) 945-6398

.....

Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 21-2003

Filed with Sec. of State: 12-16-2003

Certified to be Effective: 12-16-03

Notice Publication Date: 11-1-03

Rules Adopted: 333-020-0127, 333-020-0147, 333-020-0149, 333-020-0151, 333-020-0153

Rules Amended: 333-020-0125, 333-020-0130, 333-020-0135, 333-020-0140, 333-020-0145, 333-020-0150, 333-020-0155, 333-020-0160, 333-020-0165

Subject: The Department of Human Services is mandated to adopt rules to implement enrolled Senate Bill 401 of the 2003 Legislative Session. This bill amended the newborn hearing screening statute to create a newborn hearing screening test registry and tracking and recall system. The act mandates screening, diagnostic, and early intervention facilities to report to the Department of Human Services individual newborn hearing screening and diagnostic data, and early intervention enrollment status on newborns and allows the Department of Human Services and local public health representatives to

contact families of children for follow-up testing and/or services. The law mandates reporting deadlines from facilities to the Department of Human Services and charges the Department of Human Services to report data back to facilities. The statute also defines in more detail appointments to the Newborn Hearing Screening Advisory Committee.

Rules Coordinator: Christina Hartman—(503) 731-4000, ext. 822

333-020-0125

Definitions

As used in these rules:

(1) "Advisory Committee" means the Newborn Hearing Advisory Committee appointed by the Director of the Department of Human Services to advise the Department and the legislature on the implementation and evaluation of universal newborn hearing screening in Oregon and the state newborn hearing screening test registry, tracking and recall system.

(2) "Automated auditory brainstem response" means a specific test method that elicits an objective electro-physiological measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment that automatically provides a pass/refer outcome.

(3) "Birthing Center" means any health facility licensed by the State of Oregon for the primary purpose of performing low risk deliveries, as defined in ORS 442.015(14)(f).

(4) "Birthing Facility" means the location of a child's birth, including hospital, birthing center (or) in the case of a home or out-of-facility birth, the child's birthing attendant.

(5) "Child" (or plural "children") means any individual (or individuals) who is (are) less than 36 months of age.

(6) "Department" means the Department of Human Services-Health Services.

(7) "Diagnostic Facility" means any facility or person, including hospitals, private audiology practices, licenses health care providers and educational facilities that conduct newborn hearing diagnostic testing.

(8) "Diagnostic Testing" means the performance of physiologically-based testing on children to determine the presence or absence and extent of a hearing loss, using procedures specified by the Department, for the purposes of establishing a diagnosis and serving as a basis for initiating therapy and/or intervention.

(9) "Director" means the Assistant Director of the Department of Human Services-Health Services.

(10) "Early intervention services" means services for children with disabilities from birth until three years of age that are designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child's development, and that are selected in collaboration with the parents and caregivers.

(11) "Early intervention facility" is any public or private educational institution providing early intervention services.

(12) "EI" (or, alternately, "EI/ECSE") means the Early Intervention/Early Childhood Special Education Program of the Office of Special Education of the Oregon Department of Education. EI/ECSE provides early intervention services under public supervision by personnel qualified in accordance with criteria established by rules of the State Board of Education and in conformity with an individualized family service plan, as defined in ORS 343.035(6).

(13) "Follow-up Hearing Test" means any hearing screening or diagnostic test procedure that is conducted on a child who is enrolled in the Tracking and Recall System.

(14) "Hospital" means any health care facility licensed by the State of Oregon and meeting the definition of "hospital" in ORS 442.015(14)(a).

(15) "Newborn" means a child less than one month of age.

(16) "Newborn Hearing Screening Test" means a physiologically-based test procedure utilizing either otoacoustic emissions or automated auditory brainstem response technologies, or other technologies as approved by the Department. If a newborn achieves a 'pass' on the first screening test, screening is completed. If a newborn does not pass, a second screening test is carried out immediately using a different technology or, after an interval of 12 hours, using the same technology.

(17) "Newborn hearing screening test registry" means a listing of newborn children and information related to their newborn hearing screening tests.

(18) "Otoacoustic emissions" means a specific test method that elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Product Otoacoustic Emissions.

(19) "Pass" means a newborn hearing screening result that indicates that a child's hearing is most likely within normal limits.

ADMINISTRATIVE RULES

(20) "Private educational institution" means any private institution providing early intervention services as defined in ORS 343.035(6) or the equivalent and which have been accepted for the Office of Special Education of the Oregon Department of Education's "Approved Private Schools" list.

(21) "Public educational institution" means any public educational institution providing early intervention services, as defined in ORS 343.035(6).

(22) "Refer" means a newborn hearing screening test result that indicates that a child needs a follow-up hearing test.

(23) "Regional Program" means any one of the Low Incidence Regional Programs for the Deaf and Hard-of-Hearing.

(24) "Screening Facility" means any facility or person, including hospitals, birthing centers, private audiology practices, licensed health care providers and educational facilities that conduct newborn hearing screening tests.

(25) "Tracking and recall system" means a system attached to the newborn hearing test registry designed to identify and contact the parent or guardian of a newborn child listed in the newborn hearing screening test registry for the purposes of assisting in testing and in enrollment of the child in early intervention services in a timely manner.

Stat. Auth.: OL 2003, Ch. 240

Stat. Implemented: OL 2003, Ch. 240

Hist.: OH 8-2000, f. & cert. ef. 7-20-00, PH 21-2003, f. & cert. ef. 12-16-03

333-020-0127

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.321 et seq., which:

(a) Authorizes the Department to develop a newborn hearing screening test registry and tracking and recall system for all newborns in Oregon; and

(b) Requires the Department to adopt rules to develop and implement the registry and recall system.

(2) In order to identify children with hearing loss as early as possible and assure timely entry into early intervention services, it is the intent that all Oregon newborns will be enrolled in the newborn hearing screening test registry using information derived from birth records and from screening facility reports to the Department.

(3) It is the intent that all children who are identified in the newborn hearing screening test registry as not having completed a newborn hearing screening test (and) all children who received a result of "REFER" on the newborn hearing screening test shall be enrolled in the Tracking and Recall system. In addition, it is the intent that all children in the Newborn Hearing Screening Test Registry who are diagnosed with a hearing loss regardless of their initial newborn hearing screening test result shall be enrolled in the Tracking and Recall System.

(4) It is the intent that all screening facilities and diagnostic facilities that are conducting follow-up hearing tests on children enrolled in the tracking and recall system shall report child-specific information to the Department for the purposes of assuring that children are receiving needed services in a timely manner.

Stat. Auth.: OL 2003, Ch. 240

Stat. Implemented: OL 2003, Ch. 240

Hist.: PH 21-2003, f. & cert. ef. 12-16-03

333-020-0130

Requirement for Hearing Loss Screening in Newborn Children

(1) In all hospitals or birthing centers with more than 200 live births per year, each newborn child shall receive a Newborn Hearing Screening Test within one month of the child's date of birth.

(2) The hospital or birthing center shall attempt to conduct the Newborn Hearing Screening Test prior to discharge of the child from the facility.

(3) No newborn child may be refused the Newborn Hearing Screening Testing because of an inability of the parent or guardian to pay for the testing.

(4) For hospitalized children, the timing of the Newborn Hearing Screening Test may be deferred if medically indicated.

(5) The hospital or birthing center shall notify the parent or guardian and the health care provider of the newborn child of the Newborn Hearing Screening Test results within 10 days of the test. This notification shall include a description of the meaning of a Pass result and a Refer result.

(6) The hospital or birthing center shall, with the results of the Newborn Hearing Screening Test, provide the parent or guardian of a child who needs follow-up testing and the health care provider with the names and contact information for diagnostic facilities and a description of the importance of timely diagnosis and intervention.

(7) The Department will determine the number of live births per year by information provided by the Center for Health Statistics of the Department.

(8) Hospitals or birthing centers which in the past have not had more than 200 births per year and which then report to the Department more than 200 live births in a calendar year, shall be required to begin providing Newborn Hearing Screening Testing by July first of the following calendar year.

(9) Hospitals or birthing centers which in the past have had more than 200 live births per year and which then report to the Department fewer than 200 live births in a calendar year may choose to discontinue providing Newborn Hearing Screening Testing on or after April first of the following calendar year.

(10) Hospitals or birthing centers with fewer than 200 live births per year, and which are not providing the Newborn Hearing Screening Test, shall provide the parent or guardian of a newborn child born in their facility with information furnished by the Department including, but not limited to, a list of Department recommended screening facility locations and contact information, and a statement indicating that newborn hearing screening is considered standard of care.

Stat. Auth.: ORS 433.321

Stat. Implemented: ORS 433.321

Hist.: OH 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0135

Facility Responsible for Performing the Newborn Hearing Screening Test

(1) Should a newborn child be discharged from a hospital or birthing center with more than 200 live births in a calendar year before the Newborn Hearing Screening Test is performed or completed, it shall be the responsibility of the hospital to arrange for the provision of screening.

(2)(a) In all hospitals and birthing centers with more than 200 live births in a calendar year, the hospital or birthing center where a baby is born is responsible for assuring that the Newborn Hearing Screening Test is performed on that newborn child within one month of the child's date of birth, except that, for hospitalized children, the timing of the testing may be deferred past the one month time line, if medically indicated. If testing is deferred, the hospital shall be responsible for performing the Newborn Hearing Screening Test prior to the child's discharge to home.

(b) For purposes of this section, in the case of a newborn child admitted to a hospital as a result of transfer from another hospital or birthing center, the hospital from which the child is discharged to home shall be responsible for the performance of the Newborn Hearing Screening Test, if not done prior to transfer.

Stat. Auth.: ORS 433.321

Stat. Implemented: ORS 433.321

Hist.: OH 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0140

Maintaining a List of Facilities Able to Perform Follow-up Diagnostic Testing

(1) The Department shall maintain a list of licensed clinical audiologists or licensed physicians able to perform Diagnostic Testing, as follows:

(a) The Department shall establish written criteria for placement on the list, including testing and reporting requirements.

(b) Individual audiologists or physicians may choose to be identified solely by the facility with which they are affiliated or by whom they are employed, if that facility accepts the testing requirements of 333-020-0145(1)(a).

(c) Audiologists or physicians who meet the criteria for inclusion on the list may notify the Department that they wish to be included on the list, and upon verification of eligibility, the Department shall immediately update the list.

(2) The list, and the criteria, shall be available at the Department, upon request.

(3) The Department shall provide the list, on at least an annual basis, no later than April first, to all hospitals or birthing centers.

Stat. Auth.: ORS 433.321

Stat. Implemented: ORS 433.321

Hist.: OH 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0145

Maintaining and Distributing a List of Early Intervention Facilities

(1) The Department shall maintain a list of early intervention facilities that provide early intervention services to infants who are deaf or hard-of-hearing, as follows:

(a) Each Regional Program.

(b) Each county office of the EI/ECSE program.

(c) Each private educational institution.

ADMINISTRATIVE RULES

(d) The Department may list the Regional Program in lieu of the EI county office(s) in that region, at the discretion of the Office of Special Education of the Oregon Department of Education, for the purpose of simplifying and facilitating the early intervention enrollment process for parents and guardians.

(2) The Department shall provide this list of early intervention facilities to all individuals or facilities that are on the list of diagnostic facilities, as defined in OAR 333-20-0145, annually, no later than September first, to facilitate referrals.

Stat. Auth.: ORS 433.321
Stat. Implemented: ORS 433.321
Hist.: OHD 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0147

Newborn Hearing Screening Test Registry

Using information submitted by birthing facilities and screening facilities, including birth records and newborn hearing screening test results, the Department shall establish a registry of all newborns and their hearing screening test results or status.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: PH 21-2003, f. & cert. ef. 12-16-03

333-020-0149

Tracking and Recall System

(1) In consultation with the Advisory Committee, the Department shall establish and implement a tracking and follow-up protocol for newborns in the Newborn Hearing Screening Test Registry identified with hearing loss or at-risk of hearing loss, including, but not limited to:

(a) Newborns who have no recorded newborn hearing screening test results and/or no recorded newborn hearing screening status in the Newborn Hearing Screening Test Registry

(b) Newborns who have newborn hearing screening test results or status of:

(A) "REFER"

(B) Unable to complete initial screen

(C) Screening deferred for medical reasons

(c) Newborns or children who have been diagnosed with hearing loss

(2) At a minimum, the tracking and follow-up protocol shall include:

(a) Responsibilities of Department staff for identifying children in need of follow-up testing and for contacting parents/guardians, health care providers and local public health staff regarding needed follow-up services

(b) Recommended methods and time frames for contacting parents/guardians, health care providers and local public health agencies regarding needed follow-up services

(c) Procedures to document contacts made and outcomes of contacts

(d) Procedures to identify, document and comply with parent/family desire to opt-out of continued follow-up

(e) Procedures to document and address barriers to timely follow-up services, including financial and geographic barriers

(f) Procedures to document "Loss to follow-up" after reasonable attempts are made to contact family and/or health care provider

(g) Procedures to assure child-specific and family information is used only for the purposes for which it is intended and is not disclosed for other unrelated purposes.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: PH 21-2003, f. & cert. ef. 12-16-03

333-020-0150

Collecting and Submitting Information Related to Newborn Hearing Screening

(1) By November 1, 2003, the Department shall develop confidential reporting mechanisms and protocols for reporting newborn hearing screening test results to the Newborn Hearing Screening Test Registry. The reporting mechanisms and protocols shall be reviewed at least annually and modified as necessary.

(2) By November first of each year, or as necessary due to modifications, the Department shall provide a written description of the reporting mechanisms and protocols, including reporting form templates if appropriate, to all screening facilities.

(3) Prior to the January 1, 2004 effective date of the law and as requested, the Department shall offer training and technical assistance for screening facility staff to assure effective implementation of the newborn hearing screening reporting requirements.

(4) Beginning January 1, 2004, within 10 days of testing, each screening facility conducting newborn hearing screening tests shall report to the Department, at a minimum, the following information about each newborn child receiving hearing screening in that facility.

(a) Name of the child;

(b) Child's date of birth;

(c) Birthing facility identifier;

(d) Screening facility identifier, if different than birthing facility;

(e) Newborn blood spot screening kit unique identification number, for matching purposes;

(f) Result of the newborn hearing screening test (or) status of the newborn hearing screening test, if not completed.

(5) The Department may request that screening facilities report additional information deemed necessary to:

(a) Match the newborn hearing screening test result or status with the appropriate child in the Newborn Hearing Screening Test Registry;

(b) Identify children with risk factors for hearing loss.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: OHD 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0151

Collecting and Submitting Information Related to Diagnostic Testing for Hearing Loss in Newborns

(1) By November 1, 2003, the Department shall develop and maintain confidential reporting mechanism (s) for child-specific diagnostic hearing test information.

(2) In consultation with the Advisory Committee, the Department shall develop and distribute reporting form templates and protocols to approved diagnostic facilities, clinical audiologists and physicians conducting diagnostic hearing tests or other follow-up hearing testing on children.

(3) Prior to the January 1, 2004 effective date of the law and as requested, the Department shall develop and offer training sessions for diagnostic facility staff to assure effective implementation of the reporting forms and protocols.

(4) The Department shall review reporting forms and protocols at least annually, and as necessary, for effective management of the program. In the event of a modified form or protocol, the Department shall give the diagnostic facility at least one full calendar month to incorporate the new form or protocol into practice.

(5) Within 10 days of testing of a child who has a "REFER" result on the newborn hearing screening test (or) who presents for an initial or completion of a newborn hearing screening test (or) who is diagnosed with a hearing loss, the diagnostic facility conducting the testing shall report, at a minimum, the following information to the Department via the confidential reporting mechanism(s) established by the Department

(a) Name of the child

(b) Child's date of birth

(c) Birthing facility identifier, if known

(d) Parent or guardian's name, address, and contact information

(e) Child's primary health care provider

(f) Newborn hearing screening results, if known

(g) Diagnostic facility identifier

(h) Diagnostic testing results, including type and degree of hearing loss and affected ear(s), if applicable

(i) Disposition, including referrals made to early intervention services

(j) Name and contact information for person completing diagnostic hearing test

(k) Name and contact information for person completing form, if different than (j).

(6) The Department may request that diagnostic facilities report additional information deemed necessary to:

(a) Match the follow-up test result or status with the appropriate child in the Newborn Hearing Screening Test Registry and Tracking and Recall System;

(b) Provide or offer follow-up services to children identified with hearing loss or at-risk of hearing loss and their families.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: PH 21-2003, f. & cert. ef. 12-16-03

333-020-0153

Collecting and Submitting Information Related to Early Intervention for Children Identified with Hearing Loss

(1) By November 1, 2003, the Department shall develop and maintain confidential reporting mechanism (s) for child-specific early intervention services information.

(2) In consultation with the Advisory Committee, the Department shall develop and provide reporting protocols and reporting form templates to all early intervention facilities.

(3) Prior to the January 1, 2004 effective date of the law and as requested, the Department shall develop and offer training sessions for

ADMINISTRATIVE RULES

early intervention facility staff to assure effective implementation of the reporting protocols and forms.

(4) The Department shall review the reporting forms and protocols at least annually, or as necessary, for effective management of the program. In the event that a reporting form or mechanism is modified, the Department shall give the early intervention facilities at least one full calendar month to incorporate the new form or protocol into practice.

(5) Within 14 days of receiving a referral for a child with a diagnosed hearing loss, the early intervention facility shall report, at a minimum, the following information to the Department:

- (a) Name of the child;
- (b) Child's date of birth;
- (c) Child's birthing facility (if known);
- (d) Parent or guardian's name, address and contact information;
- (e) Child's county of residence;
- (f) Child's primary health care provider;
- (g) Date referral received;
- (h) Reason for referral (diagnosis);
- (i) Status of referral.

(6) Within 14 days of evaluating a child with a hearing loss for enrollment in early intervention services, the early intervention facility shall report at a minimum the following information to the Department:

- (a) Name of the child;
- (b) Child's date of birth;
- (c) Child's birthing facility (if known);
- (d) Parent or guardian's name, address and contact information;
- (e) Child's county of residence;
- (f) Child's primary health care provider;
- (g) Date evaluation completed;
- (h) Disposition (i.e., eligible/not eligible for early intervention services; enrolled/not enrolled in early intervention services);

(i) Reason for non-eligibility (or) non-enrollment of eligible child (if applicable);

(j) Age in months at time of enrollment in early intervention services.

(7) The Department may request that early intervention facilities report additional information deemed necessary to:

(a) Match the early intervention status with the appropriate child in the Newborn Hearing Screening Test Registry and Tracking and Recall System

(b) Provide or offer follow-up services to children identified with hearing loss and their families.

(8) The Department may request that early intervention facilities collect and, with parental authorization, report additional information about children who are deaf or hard-of-hearing for effective evaluation and management of the system of services for children identified with hearing loss and their families. The Department shall develop and distribute appropriate reporting form templates and protocols for use by early intervention facilities.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: PH 21-2003, f. & cert. ef. 12-16-03

333-020-0155

Responsibility for Issuing Reports

(1) The Department shall analyze the information collected under OAR 333-020-160 through 333-020-0175:

(a) The Department shall provide an individualized monthly report to each screening, diagnostic and early intervention facility detailing submissions from that facility from the previous month. Monthly reports to each facility shall include information about the follow-up status of individual children from that facility who are enrolled in the tracking and recall system as allowed by law.

(2) The Department shall issue an annual report and analysis of aggregated data submitted by all screening, diagnostic and early intervention facilities, by July first of each year for the previous year's data.

(3) In consultation with the Advisory Committee, the Department shall include in the annual report recommendations for improvement of the Early Hearing Detection and Intervention Program, including but not limited to improvement in the Newborn Hearing Screening Test Registry and Tracking and Follow-up System.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: OHD 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0160

Appointment of a Newborn Hearing Advisory Committee

(1) The Director shall appoint an Advisory Committee to:

(a) Provide policy level guidance and advice to the Department on the implementation of the Newborn Hearing Screening Test Registry and

Tracking and Recall system as defined by OAR 333-020-0125 through 333-025-0180.

(b) Provide assistance in the preparation of a report to the biennial Legislative Assembly on the status of early hearing detection and intervention efforts in Oregon and the implementation and evaluation of the Newborn Hearing Screening Test Registry and Tracking and Recall System. The report will include but not be limited to strategies to increase the rate of early screening for children born in hospitals and birthing centers with less than 200 live births per year or born outside of hospitals and birthing centers.

(2) At a minimum, the Advisory Committee shall include at least one representative from each of the following categories:

- (a) Parent of a child with hearing loss;
- (b) Adult with hearing loss;
- (c) Pediatric health care provider;
- (d) Clinical audiologist;
- (e) Hospital newborn hearing screening program representative;
- (f) Diagnostic facility representative;
- (g) Early intervention facility representative;
- (h) Local public health agency representative;
- (i) Speech-language pathologist.

(3) The Director shall establish by-laws of the Advisory Committee, including additional committee membership categories, committee duties and terms.

Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: OHD 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

333-020-0165

Religious Exemption from Testing

(1) A hospital or birthing center directed to provide Newborn Hearing Screening Tests under these Administrative Rules is exempt from providing such services if the parent or guardian of the newborn child objects to the testing procedure on the grounds that the procedure conflicts with the religious tenets and practices of the parent or guardian.

(2) The parent or guardian must sign a statement that the newborn child is being so reared, using the following language: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: OL 2003, Ch. 240
Stat. Implemented: OL 2003, Ch. 240
Hist.: OHD 8-2000, f. & cert. ef. 7-20-00; PH 21-2003, f. & cert. ef. 12-16-03

Adm. Order No.: PH 22-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-5-04

Notice Publication Date: 12-1-03

Rules Adopted: 333-054-0100

Rules Amended: 333-054-0000, 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070

Rules Repealed: 333-054-0000(T), 333-054-0010(T), 333-054-0020(T), 333-054-0030(T), 333-054-0040(T), 333-054-0050(T), 333-054-0060(T), 333-054-0070(T), 333-054-0090, 333-054-0100(T)

Subject: Retroactively adopts rules that were previously submitted to the Secretary of State's office on December 24, 2002. The previously submitted rule changes included recommendations by USDA to delete some Type 2 state violations that are covered under Type 3 federally mandated violations. Rule changes outlined acceptable parameters on the use of state and federally protected acronyms and logos and retention of WIC shopper information. Under those rules, Oregon WIC vendors must be authorized with the Food Stamp Program, conduct all WIC transactions at the store location, and carry a minimum stock requirement at all times.

Excepting one new rule regarding the effective date, these rules are identical to the rules previously filed with the Secretary of State on December 24, 2002.

Rules Coordinator: Jana Fussell—(503) 731-4000, ext. 822

333-054-0000

Description of WIC Program

(1) The WIC Program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the WIC Program is to serve as an adjunct to health care by providing:

ADMINISTRATIVE RULES

nutrition education and counseling; nutritious supplemental foods; and health screening and referral services to pregnant and breast-feeding women, infants, and children in certain high risk categories.

(2) Federal regulations governing the WIC Program, 7 CFR § Part 246, require adoption and implementation of standards and procedures to guide the state's administration of the WIC Program. These regulations also define the rights and responsibilities of vendors.

(3) The WIC Program in the State of Oregon is administered by the Department of Human Services (DHS).

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0010

Definitions

(1) "Adequate Participant Access" means a determination based on the availability of other vendors within a five-mile radius, geographic barriers to using other vendors, local agency recommendations based upon identified participants' needs, and the availability of public transportation and roads.

(2) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors that reapply for authorization.

(3) "Authorization" means the process by which DHS assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be vendors.

(4) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List or the food instrument.

(5) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee.

(6) "CFR" means Code of Federal Regulations.

(7) "CMP" means civil money penalty.

(8) "Compliance buy" means a single covert, on-site visit in which a DHS representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(9) "DHS" means Oregon Department of Human Services.

(10) "Disqualification" means the act of ending the WIC Program participation of a vendor, whether as a punitive sanction or for administrative reasons.

(11) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(12) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(13) "Food instrument" means a WIC Program voucher, check, electronic benefits transfer (EBT) card, coupon or other WIC approved document, which is used to obtain authorized foods.

(14) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from DHS during a specific period of time.

(15) "Investigation" means a period of review, not to exceed 24 months, of a vendor's compliance with program rules and procedures.

(16) "Local agency" means

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(17) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(18) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(19) "Peer group" means a group of vendors categorized by DHS based on store type and store size.

(20) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(21) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 25% interest or more in the business.

(22) "Price adjustment" means an adjustment made by DHS, in accordance with the vendor agreement, to the purchase price on a food instrument, which matches the vendor's actual shelf price, for the total of the individual items, but exceeds the maximum amount allowable by DHS for the vendor's peer group for that food instrument.

(23) "Routine monitoring" means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor personnel.

(24) "Trafficking" means buying or selling food instruments for cash.

(25) "U.S.C." means United States Code.

(26) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program.

(27) "Vendor agreement" means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(28) "Vendor overcharge" means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price they charge other shoppers.

(29) "Vendor Price List" means a list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(30) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050.

(31) "WIC Authorized Food List" means the list of supplemental foods approved by the State of Oregon.

(32) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.003, 409.600, 431.110, & 431.250

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0020

Vendor Participation

(1) Only authorized vendors may accept food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes: an application form; a Vendor Price List; a sample of the applicant's current bank endorsement stamp or other method of endorsement approved by DHS, listing the specific store name and store number; a current Food Stamp Authorization number and any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, when it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the average redemption prices of individual authorized foods within the peer group appropriate to the applicant's characteristics, plus a DHS-determined percentage;

(b) Possess a current bank account number;

(c) Ensure the store has adequate refrigeration facilities;

(d) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(e) Possess a current FSP authorization number. Pharmacies shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(f) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(g) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

ADMINISTRATIVE RULES

(h) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired; and

(i) Have a fixed location for each store.

(j) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement, however, they shall obtain infant formula, including formula which requires a prescription, within 72 hours of a DHS or participant request.

(k) An applicant's store which is necessary to ensure adequate participant access may be exempt from OAR 333-054-0020(3)(a) and (j).

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials:

(a) DHS shall give the applicant written notification of denial, in conformance with ORS chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(A) The applicant's failure to meet the selection criteria;

(B) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(C) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC Program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(D) The applicant's history of redemption of food instruments;

(E) The applicant's refusal to accept training from the WIC Program;

or

(F) The applicant's misrepresentation of information on the application.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0030

Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement. The term of a vendor agreement shall not exceed three years. The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.

(2) A vendor shall apply for authorization prior to the expiration of each vendor agreement and shall meet the selection criteria in effect at the time of each application. DHS or local agency shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but

not limited to: store remodel, building damage, and equipment failure) DHS shall disqualify the vendor.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party.

(6) DHS shall terminate a vendor agreement when DHS determines that there is an inappropriate relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.

(11) Vendor Responsibility. A vendor shall:

(a) Comply with all applicable federal and state laws, rules and regulations, in addition to the terms of the vendor agreement;

(b) Be accountable for any intentional or unintentional action of its owners, officers, managers or employees, with or without the knowledge of management, who violate the vendor agreement or federal or state statutes, regulations, policies or procedures governing the Program. The vendor is also accountable for the actions of anyone who works as a checker, whether they are paid or not;

(c) Designate one person, at each authorized vendor location, to serve as the designated trainer. The designated trainer shall train all checkers and other staff involved with WIC transactions regarding the handling of food instruments. The vendor or its designated trainer shall promptly inform employees of changes in the WIC Program, including changes to the WIC Authorized Food List;

(d) Ensure that the designated trainer and store manager or other management employee participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter. During the period in which a vendor agreement is in effect, DHS shall conduct at least one live interactive training for that vendor. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training;

(e) At all reasonable times, provide DHS' authorized representative or federal government official access to the vendor's facilities, books, records and documents at all reasonable times. The vendor shall provide the above entities and individuals access to food instruments negotiated on the day of review, shelf price records, financial records and other documents that DHS or federal officials determine are pertinent to determining a vendor's compliance. The vendor shall also, upon request, furnish to DHS, within two days, verification of total vendor purchases of specific items in order to justify amounts claimed as WIC Program purchases;

(f) For a period of three years, maintain purchase and receiving records, including, but not limited to, inventory records showing all wholesale and retail purchases, state and federal tax returns, and other pertinent records that substantiate the volume and prices charged for redeemed food instruments. In the case of retail purchases, the vendor shall provide receipts specifying the authorized food item purchased, quantity, unit price and date of purchase;

(g) Notify DHS in writing of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change:

(A) In the event of a cessation of operations or any change in ownership, the legal authority obligating the vendor, or store location, the vendor agreement shall be terminated;

(B) In the event of a name change for any store the vendor shall, within 60 days of the change, ensure that the store's outside sign bears the same name as that listed on the vendor agreement; and

(C) If the vendor closes any store listed in the vendor agreement which contains more than one store location, the vendor shall notify DHS in writing of the closed store's name, address, and telephone number. This written notification shall be considered an amendment of the vendor agreement unless disapproved in writing by DHS within 15 days of DHS' receipt of the vendor's notification.

ADMINISTRATIVE RULES

(h) Notify DHS in the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, or equipment failure), by no later than 5 p.m. the next business day.

(i) Not sell expired authorized food or infant formula to authorized shoppers;

(j) Mark all authorized foods with the price charged for these products to the general public or prominently display the price of the foods near the location of the foods in clear view of customers and in a manner that clearly identifies the price with the specific food item;

(k) Upon DHS' request, complete and return a Vendor Price List by the deadline set by DHS;

(l) Maintain the premises in a sanitary condition;

(m) Not retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(n) Not engage in any conduct that would discriminate against any authorized shopper or participant based on the individual's race, color, national origin, gender, age, and disability. Complaints of discrimination will be forwarded to the USDA for follow-up in accordance with 7 CFR § 246.8(b).

(o) Use the "WIC" acronym or logo only as follows:

(A) To identify the vendor as an authorized WIC vendor;

(B) To identify authorized food items by attaching shelf-talkers stating "WIC-approved" or "WIC-eligible" to store shelves.

(p) Not use the "WIC" acronym and/or logo in any way that might give the impression to WIC shoppers that the store location is:

(A) Owned by the Oregon WIC Program;

(B) Operated by the Oregon WIC Program;

(C) Officially endorsed by the Oregon WIC Program; or

(D) Preferred by the Oregon WIC Program.

(q) Comply with investigations by federal or state officials; and

(r) Implement corrective action as directed by DHS within 30 days from the issuance of a "Notice of Non-Compliance."

(12) Redemption of food instruments. A vendor shall:

(a) Require each authorized shopper to produce that individual's WIC identification card prior to the transaction. The vendor shall not require the authorized shopper to provide any other identification or information in addition to the WIC identification card in order to use the food instrument;

(b) Not allow any employee, owner, or person with an interest in the business, who is also an authorized shopper, to redeem a food instrument for which he or she is an authorized shopper;

(c) Complete all food instrument transactions at the authorized store location. The vendor shall not deliver food purchased with food instruments to WIC participants.

(d) Refuse to accept food instruments that appear to be altered;

(e) Accept only valid food instruments made payable to "Any Authorized Oregon WIC Vendor;"

(f) Accept only food instruments within the time period indicated in the "First Day To Use" and "Last Day To Use" boxes. The vendor shall refer the authorized shopper back to the local clinic if either of these dates is missing or if the "Last Day To Use" is handwritten;

(g) Ensure authorized shoppers receive the same treatment as provided to other customers such as honoring manufacturer's coupons, in-store specials or store promotions and not requiring separate lines for WIC authorized shoppers;

(h) Not accept any food instrument in exchange for alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802;

(i) Not accept any food instrument in exchange for credit or non-food items other than those listed in (h);

(j) Not accept any food instrument in exchange for food items or quantities other than those specifically identified on the food instrument, including charging the WIC Program for supplemental food in excess of those listed on the food instrument;

(k) Ensure that only those brand names and food types listed on the WIC Authorized Food List are purchased;

(l) Not influence the authorized shopper's choice of authorized foods;

(m) Not charge authorized shoppers for authorized foods obtained with food instruments;

(n) Not charge DHS more than the vendor's current shelf price or the advertised sale price, whichever is lower, for authorized food purchases;

(o) Not include sales tax or container deposits as part of the purchase price of the authorized foods listed on the food instrument;

(p) Write the actual purchase price in the designated box on the food instrument before the authorized shopper signs the food instrument. The

purchase price shall include only the authorized food items actually provided to the authorized shopper at the time of the transaction;

(q) Duly witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of any food instrument accepted for payment and compare that signature with the signature on the WIC Program identification card, ensuring that these signatures match;

(r) Provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(s) After each transaction, return the WIC Program identification card to the authorized shopper.

(13) Post-redemption of food instruments. A vendor shall:

(a) Not provide a refund or exchange for an authorized food item obtained with a food instrument, except for an exchange of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(b) Not alter any food instrument, including by use of correction fluid;

(c) Prior to deposit of a food instrument, stamp each food instrument with the vendor's unique DHS-approved 4-digit number in the designated area on the front of the food instrument;

(d) Prior to deposit of the food instrument, endorse the back of each redeemed food instrument with the store's bank endorsement stamp or other method of endorsement approved by DHS;

(e) Deposit each redeemed food instrument into the vendor's bank within the time period designated on the front of the food instrument; and

(f) Not deposit a food instrument for reimbursement for foods or formula not received by an authorized shopper.

(14) Improperly redeemed food instruments:

(a) DHS may make price adjustments in order to comply with price limitations in accordance with the vendor agreement. The maximum amount DHS will reimburse a vendor for a food instrument is the average peer group price of the food instrument plus a DHS-determined percentage;

(b) DHS may deny reimbursement to the vendor for improperly redeemed food instruments or may demand refunds for reimbursements already made on improperly redeemed food instruments. In addition to denying payment or assessing a claim, DHS may sanction the vendor for overcharges or other errors in accordance with OAR 333-054-0060;

(c) The vendor shall reimburse DHS, within 30 days of DHS' written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments and for unsubstantiated volumes of authorized foods;

(d) When DHS denies reimbursement for a food instrument or requests payment for an improperly redeemed food instrument, the vendor shall have an opportunity to provide DHS with written justification for the error. A vendor shall submit the written justification, along with the returned food instrument, within the timeframe on the front of the food instrument; and

(e) The vendor shall not seek restitution from an authorized shopper or participant for a food instrument not reimbursed or partially reimbursed by DHS, or for which DHS has requested payment from the vendor.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0040

Vendor Monitoring

(1) DHS shall monitor vendors for compliance with applicable laws and rules, including on-site investigation of randomly selected vendors.

(2) DHS or its authorized representative may conduct compliance buys to collect evidence of improper vendor practices.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0050

Violations

Violations shall be classified as either Type 1, 2, or 3 violations based on the severity of the violation. Each violation is listed by type below:

(1) Type 1 Violations:

(a) Accepting a food instrument that does not bear a "First Day To Use" and "Last Day To Use" date or is not made payable to "Any Authorized Oregon WIC Vendor";

(b) Accepting a food instrument before the "First Day To Use" or after the "Last Day To Use";

ADMINISTRATIVE RULES

(c) One incident of failing to maintain an adequate stock of authorized foods or formula to fill food instruments consistent with vendor agreement requirements. DHS may grant an exception if the vendor is able to provide documentation that the appropriate stock was on order at the time of the violation and received by the vendor within 7 days of the violation;

(d) Failing to notify DHS of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change;

(e) Failing to notify DHS by no later than 5 p.m. the next business day following any change in store facilities which adversely impact participants' ability to transact food instruments;

(f) Failing to prominently display shelf prices for authorized foods;

(g) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(h) Failing to correctly endorse food instruments;

(i) Failing to enter the actual purchase price in the designated box before the authorized shopper signs the food instrument;

(j) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(k) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement.

(2) Type 2 violations:

(a) Influencing an authorized shopper's selection of authorized foods;

(b) Accepting any food instrument when a valid WIC Program identification card is not presented prior to the transaction;

(c) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(d) Failing to witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment or failing to compare that signature with the signature on the WIC Program identification card;

(e) Treating authorized shoppers differently than other customers, such as a separate line for authorized shoppers or discourteous treatment;

(f) Selling expired authorized foods or infant formula to authorized shoppers;

(g) Failing to ensure that the designated trainer is able to demonstrate the correct procedure for processing a food instrument;

(h) Allowing a purchase of authorized infant formula in a quantity not prescribed on the food instrument;

(i) Failing to reimburse DHS, within 30 days of written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments;

(j) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(k) Failing to maintain sanitary conditions;

(l) Including sales tax or container deposits as part of the actual cost of the authorized foods listed on the food instrument;

(m) Failing to:

(A) Respond to a request issued by DHS;

(B) Accept training when required by DHS;

(C) Implement corrective action imposed by DHS;

(D) Comply with terms in a final order issued by DHS; or

(E) Comply with an investigation by federal or state officials;

(n) Charging authorized shoppers for authorized foods obtained with food instruments; and

(o) Using the "WIC" acronym or logos in an unauthorized manner.

(3) Type 3 violations:

(a) One year disqualification:

(A) A pattern of providing unauthorized food items, in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of allowing the purchase of brand names or food types other than those listed on the WIC Authorized Food List;

(C) Failing to provide purchasing/receiving records to substantiate the volume and prices charged to DHS, within two business days of DHS' request for such documentation;

(D) Refusing DHS or a federal official access to food instruments negotiated on the day of review;

(E) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(F) Seeking restitution from WIC Program participants or authorized shoppers for a food instrument not paid by DHS or for which reimbursement has been requested by DHS;

(G) Providing change when redeeming a food instrument;

(H) Violating the nondiscrimination clause listed in the vendor agreement or OAR 333-054-0030(11)(n);

(I) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper; and

(J) Providing false information or omitting pertinent information on the vendor application.

(b) Three year disqualification:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to: use of an unauthorized vendor/and or unauthorized person, and/or redemption of food instruments outside of an authorized store location.

(E) A pattern of charging for authorized foods not received by the authorized shopper; and

(F) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(3)(b)(A), (3)(c)(A) and (3)(c)(B).

(c) Six year disqualification:

(A) One incident of buying or selling a food instrument for cash (trafficking);

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument;

(d) Permanent Disqualification: Conviction of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0060

Vendor Sanctions

(1) DHS does not have to provide the vendor with prior warning that violations were occurring before imposing any sanction.

(2) Type 1 violations:

(a) For the first Type 1 violation, DHS may issue the vendor a "Notice of Non-Compliance", regardless of how many Type 1 violations occur during a single compliance buy.

(b) For the second Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan to DHS within 14 days of the date of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(c) For the third Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for six months.

(3) Type 2 violations:

(a) For the first Type 2 Violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan within 14 days of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(b) For the second Type 2 violation committed within 24 months of the first Type 2 violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for one year.

ADMINISTRATIVE RULES

(c) For a Type 2 violation followed by a Type 1 violation within 24 months of the first violation, DHS may disqualify a vendor from the WIC Program for six months.

(d) DHS may disqualify a vendor from the WIC Program for one year for a combination of three Type 1 and 2 violations, such as a Type 2 violation, followed by a Type 1, followed by a Type 2, within 24 months of the first violation.

(4) Type 3 violations:

(a) For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(A), DHS shall disqualify the vendor for one year. For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(B) to (J), DHS may disqualify the vendor for one year.

(b) For a Type 3 violation listed in OAR 333-054-0050(3)(b)(A) to (F), DHS shall disqualify the vendor for three years.

(c) For a Type 3 violation listed in OAR 333-054-0050(3)(c)(A) and (B), DHS shall disqualify the vendor for six years.

(d) For a Type 3 violation listed in OAR 333-054-0050(3)(d), DHS shall permanently disqualify the vendor. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(e) For a second Type 3 violation referred to in OAR 333-054-0060(4)(a), (b) and (c) of this section, DHS shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under OAR 333-054-0060(5)(j)(C).

(f) For a third Type 3 violation referred to in OAR 333-054-0050(4)(a), (b) and (c) of this section, DHS shall double the third sanction and all subsequent sanctions that were previously imposed. DHS shall disqualify vendor and may not impose CMPs in lieu of disqualification for third or subsequent sanctions for violations referred to in OAR 333-054-0060(4)(a), (b) and (c).

(5) Disqualification:

(a) A vendor may not apply for authorization during a period of disqualification or termination from the WIC Program.

(b) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(c) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed. If this vendor was assessed more than one CMP in lieu of disqualification as the result of a single investigation, DHS shall disqualify the vendor for the period corresponding to the most serious violation.

(d) The total period of disqualification imposed for DHS violations, resulting from a single investigation, listed in OAR 333-054-0050(1), 333-054-0050(2) and 333-054-0050(3)(a)(B) through (J) may not exceed one year.

(e) After a vendor is disqualified, in order to participate in the WIC Program, they must apply for authorization.

(f) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification. DHS shall include documentation of its participant access determination and any supporting documentation in each vendor's file. DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access. DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(g) DHS shall disqualify a vendor who has been disqualified from the FSP. The disqualification shall be for the same length of time as the FSP disqualification, although it may begin at a later date than the FSP disqualification. Such disqualification by the WIC Program shall not be subject to administrative or judicial review under the WIC Program.

(A) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP disqualification pursuant to paragraph (9) of this section or for any of the violations listed in this section. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(B) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified for any of the violations listed in paragraphs OAR 333-054-0060(4)(a), (4)(b) and (4)(c) of this section. This information shall include the vendor's name,

address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP CMP was assessed.

(h) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP. Such disqualification may not be subject to administrative or judicial review under the FSP.

(i) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(A) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(B) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(j) DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification pursuant to these rules:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (5)(j)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$10,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$40,000.

(k) DHS shall disqualify a vendor for a period corresponding to the most serious sanction when during the course of a single investigation DHS determines a vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after a hearing or appeal, DHS may impose a sanction for any remaining violations.

(l) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(6) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(7) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

(8) A vendor may be subject to actions in addition to the sanctions in this section, such as claims by DHS of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(9) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a five-mile radius;

(b) Geographic barriers to using other authorized vendors;

(c) Local agency recommendations based upon identified participants' needs; and

(d) Availability of public transportation and roads;

(10) Any time DHS uses criteria in (9), DHS shall include participant access documentation in vendor file.

(11) DHS shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(12) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

ADMINISTRATIVE RULES

333-054-0070

Administrative Review

(1) Except as otherwise provided in these rules, DHS shall provide a vendor with an administrative review in accordance with the provisions of ORS Chapter 183.

(2) The vendor shall not be entitled to an administrative review for the following actions:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether a vendor had an effective policy and program in effect to prevent trafficking regardless of the vendor's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the vendor's agreement;

(f) Disputes regarding food instrument payments and vendor claims; and

(g) Disqualification of a vendor as a result of disqualification from FSP.

(3) If the vendor agreement expires during the appeal period, DHS will accept application for renewal and delay determination until the appeal process is over.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

333-054-0100

Effective Date

The effective date for rules 333-054-0000, 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070 and 333-054-0100 shall be December 24, 2002.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04

.....

Adm. Order No.: PH 1-2004

Filed with Sec. of State: 1-2-2004

Certified to be Effective: 1-2-04

Notice Publication Date: 12-1-03

Rules Repealed: 333-013-0006, 333-013-0026

Subject: Repeal 333-013-0006, Laboratory Methods and 333-013-0026, Methods of Chemical Analysis, in response to HB 2157. Since 1987, analysis of a person's blood for alcohol content while driving or boating, had to be performed by a method approved by the Department of Human Services (DHS). DHS will no longer be involved in maintaining and updating rules related to blood alcohol methods. Effective January 1, 2004 a blood alcohol test will be valid under ORS 813.300, if it is performed in a laboratory certified or accredited under the Clinical Laboratory Improvement Amendments (CLIA) for toxicology testing, a laboratory licensed under ORS 438.110 and approved for toxicology testing, or a forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

Rules Coordinator: Christina Hartman—(503) 731-4000, ext. 822

.....

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 32-2003(Temp)

Filed with Sec. of State: 12-17-2003

Certified to be Effective: 12-17-03 thru 3-31-04

Notice Publication Date:

Rules Amended: 461-110-0350

Subject: Rule 461-110-0350 is being amended to exempt a child care provider from being counted in the filing group when a child is in full time care due to their caretaker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0350

Filing Group; ERDC

For ERDC, the filing group consists of applicants who meet all non-financial eligibility requirements and the following applicants and household group members, even if they do not meet nonfinancial eligibility requirements:

(1) The caretaker of the child for whom ERDC benefits are requested, except that this section (1) does not apply to a provider of child care for the child of a member of an armed forces reserve unit or a member of the National Guard and who has been called to active duty and is away from the child's home for more than 30 days.

(2) Unmarried children and their siblings, under age 18 or age 18 and attending school full time, in the care and custody of the caretaker. Include foster child(ren) if the caretaker wants to include them in the need group.

(3) The parent(s) of a child required to be in the filing group.

(4) The parent(s) of an unborn, if the unborn's siblings are required to be in the filing group.

(5) The spouse of the caretaker.

(6) Allow minor parents to form a separate filing group with their dependent child(ren) when the minor parent applies as the caretaker.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04

.....

Adm. Order No.: SSP 33-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 461-135-0847

Rules Amended: 461-025-0311, 461-110-0330, 461-115-0705, 461-120-0120, 461-120-0340, 461-120-0345, 461-135-0010, 461-135-0730, 461-135-0780, 461-135-0830, 461-135-0832, 461-135-1120, 461-135-1130, 461-155-0020, 461-155-0030, 461-155-0035, 461-155-0150, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0526, 461-155-0680, 461-160-0580, 461-160-0620, 461-165-0030, 461-170-0010, 461-175-0200, 461-180-0070, 461-180-0105, 461-190-0110, 461-190-0161, 461-190-0211, 461-190-0360, 461-195-0501, 461-195-0561

Rules Repealed: 461-135-0180, 461-190-0191

Subject: Rule 461-025-0311 is being amended to remove contested case hearings regarding Pay-After-Performance (PAP) because PAP is being eliminated.

Rule 461-110-0330 is being amended to include caretaker relatives and exclude people who receive adoption assistance from the filing group.

Rule 461-115-0705 is being amended to clarify that the verification requirements for OHP also include the need to verify eligibility for benefits through an Indian Health Program for persons who want to be exempt from paying OHP premiums.

Rule 461-120-0120 is being amended to update the refugee/asylee immigration statuses.

Rule 461-120-0340 is being amended because Pay-After-Performance is being eliminated.

Rule 461-120-0345 is being amended to clarify that a person eligible for the Oregon Health Plan (OHP) under the OHP-OPU program must enroll all other OHP-OPU recipients in the family in his or her employer-sponsored health insurance if they are all eligible for the Family Health Insurance Assistance Program (FHIAAP). The OHP-OPU program (also called OHP Standard) provides medical assistance to low-income nonpregnant adults. This rule is also being amended to clarify that persons eligible for benefits through an Indian Health Program are exempt from the requirement to cooperate in determining eligibility for the Family Health Insurance Assistance Program as a client of the Oregon Health Plan.

Rule 461-135-0010 is being amended to reflect federal policy and guidance for the eligibility of medical assistance for pregnant women.

Rule 461-135-0180 is being repealed because Pay-After-Performance is being eliminated.

ADMINISTRATIVE RULES

Rule 461-135-0730 is being amended to align it with Federal policy.

Rules 461-135-0780, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 are being amended to reflect the Congressionally-approved cost-of-living increase for recipients of Social Security/SSI.

Rule 461-135-0830 is being amended to restrict enrollment to those who could be found eligible if they lost entitlement for Supplemental Security Income (SSI) under Section 1634(c) of the Social Security Act on or after July 1, 1987. This conforms with Section 6 of the Employment Opportunity for Disabled Americans Act (P.L. 99-643). The current version of the rule does not specify a date under which eligibility could be determined.

Rule 461-135-0832 is being amended to clarify the definition of "disabled child." Specifically that the child, in addition to being disabled by SSI criteria, must also be permanently and totally disabled.

Rule 461-135-0847 is being adopted to implement the following forms: "Request for Notice of Transfer or Encumbrance," "Termination of Request for Notice of Transfer or Encumbrance," and "Notice of Transfer or Encumbrance."

Rule 461-135-1120 is being amended to clarify that persons eligible for benefits through an Indian Health Program are exempt from the requirement to pay premiums under the OHP-OPU program of the Oregon Health Plan.

Rule 461-135-1130 is being amended to make the rule consistent with the July 1, 2003 amendment to rule 461-135-1120 regarding the date an Oregon Health Plan (OHP) premium payment must be received to be considered paid on time. The rule is also amended to clarify that clients disqualified for not timely paying premiums are ineligible for OHP-OPU.

Rule 461-155-0020 is being amended to update program acronyms and to specify that no-adult standard tables are used for TANF and REF programs. The MAA and MAF medical programs will no longer use the no-adult standards. Also, section (3) is being amended to note that individuals receiving Adoption Assistance are not counted in the number in household when determining TANF benefit levels in no-adult households.

Rule 461-155-0030 is being amended to update program acronyms and to specify that no-adult standards are used for TANF and REF programs. The MAA and MAF medical programs will no longer use the no-adult standards.

Rule 461-155-0035 is being amended to reflect increases in the amount of the Cooperation Incentive Payment standard.

Rule 461-155-0150 is being amended to decrease all ERDC copays by \$18 per month and to implement a reduced copay for the first month of ERDC eligibility.

Rule 461-155-0526 is being amended to clarify that a client must have been admitted as an inpatient to an acute care hospital, and not only have received emergency room care, in order to be eligible for payments under this rule.

Rule 461-155-0680 is being amended to not require clients receiving in-home services to apply for the Oregon Telephone Assistance Program (OTAP) or Link-Up America because their application for these programs will be denied based on the income limit for the program under which they receive Department benefits.

Rule 461-165-0030 is being amended to specifically state that individuals may not simultaneously receive benefits funded by TANF and Title IV-E of the Social Security Act.

Rule 461-170-0010 is being amended to correct an omission made with the October 1, 2003 filing of this rule.

Rule 461-175-0200 is being amended because Pay-After-Performance is being eliminated.

Rule 461-180-0070 is being amended because Pay-After-Performance is being eliminated.

Rule 461-180-0105 is being amended to clarify that clients, who have delayed their Oregon Health Plan disqualification pending a hearing, will have their disqualification start following the issuance of a final order upholding the Department's decision.

Rule 461-190-0110 is being amended because the definition of "component" in the JOBS program is being amended to remove "self-initiated training" and include "Microenterprise" and "vocational training."

Rule 461-190-0161 is being amended to remove the definition of "self-initiated training", add a definition of "vocational training", and remove the time limit restrictions on work supplementation.

Rule 461-190-0191 is being repealed because with the end of the Oregon Option waiver to federal TANF rules, Oregon has decided to consolidate the self-initiated training component of the JOBS program into the federally-countable vocational education component.

Rule 461-190-0211 is being amended because the Oregon Option waiver to federal TANF rules is ending and Oregon has decided to consolidate the self-initiated training component of the JOBS program into the federally-countable vocational education component.

Rule 461-190-0360 is being amended to increase the maximum reimbursement to participants costs for participating in the Oregon Food Stamp Employment and Transition (OFSET) program components or activities to \$40 a month per participant.

Rule 461-195-0501 is being amended to specify that a JOBS support service payment can be an overpayment when the client receives it as a result of fraudulently receiving TANF.

Rule 461-195-0561 is being amended to correct an OAR citation. OAR 461-200-6120 has been renumbered to 137-055-6120.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-025-0311

Continuation of Benefits

(1) This rule explains who may receive continuing benefits while a contested case pending.

(2) A client who is entitled to a *continuing benefits decision* notice under a rule in division 175 of this chapter of rules may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

- (a) The tenth day following the date of the notice; and
- (b) The effective date of the action proposed in the notice.

(3) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.

(4) In determining timeliness under section (2) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 28-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-110-0330

Filing Group; ADCM-EA, EXT, MAA, TANF

(1) In the ADCM-EA, EXT, MAA and TANF programs, a filing group must include a dependent child or unborn child and the following household members (even if they are not applicants or do not meet nonfinancial eligibility requirements):

- (a) Parents of the dependent children in the filing group.
- (b) Parents of an unborn child in the filing group.
- (c) Siblings of the dependent child, except as specified in subsection (3)(a) of this rule. The siblings must be under the age of 18, or 18 years of age and attending school full time.

(3)(a) of this rule. The siblings must be under the age of 18, or 18 years of age and attending school full time.

(d) For needy caretaker relatives of the dependent child, their spouse and their dependent children.

- (e) Caretaker relatives.

(2) A dependent child is not included in the filing group if he or she has been or will be receiving foster care payments for more than 30 days or is receiving adoption assistance.

(3) The parents of a minor parent are not in the minor parent's filing group if:

- (a) The minor parent does not live with his or her parent; or
- (b) The parents of the minor parent are in the minor parent's household but are not applying for MAA or TANF for the minor parent or any of his or her siblings.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 418.040 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-

ADMINISTRATIVE RULES

31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-115-0705

Required Verification; OHP

This rule establishes verification requirements for the OHP program in addition to the requirements of OAR 461-115-0610.

(1) At initial application and at any other time it affects the client, the following must be verified:

(a) The requirement in OAR 461-120-0210 to have or apply for a social security account number.

(b) Alien status for applicants who indicate they are not U.S. citizens.

(c) The premium exemption allowed because a client is:

(A) A member of a federally recognized Indian tribe, band or group;

(B) An Eskimo, Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(C) A person eligible for benefits through an Indian Health Program.

(d) Except as follows, income from the past three months and income already received in the budget month:

(A) If verification is not available for a month, the previous month's income is used if it is a reasonable estimate of anticipated income.

(B) If the previous month's income is not a reasonable estimate for a month's income, the client's unverified statement is accepted.

(2) At recertification, the following must be verified:

(a) Unearned income if it has changed since the last certification.

(b) Earned income from the three months prior to the budget month.

(3) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(4) The following must be verified when it is first reported or changed:

(a) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(b) Amount of the premium for cost-effective employer-sponsored health insurance.

(5) A client must provide verification to support a request for waiver of a premium arrearage (see OAR 461-135-1130).

(6) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 411.060, 414.042, 414.047

Stats. Implemented: ORS 411.060, 414.042, 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-120-0120

Alien Status; REF, REFM

Persons admitted lawfully under any of the following provisions of law meet the alien status requirements of the REF and REFM programs:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)).

(2) Admitted as a refugee under section 207 of the INA (8 U.S.C. 1157).

(3) Granted asylum under section 208 of the INA (8 U.S.C. 1158).

(4) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(6) Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) — "victims of trafficking" certified under the law.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 11-2002(Temp), f. & cert. ef. 10-1-02 thru 12-31-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-120-0340

Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

(1) To be eligible for TANF, a caretaker relative must make a *good faith effort* to help the Department establish paternity of each needy child and locate, and obtain support payments from, the noncustodial parent of

each needy child. A client is excused from the requirements of this section for good cause defined in OAR 461-120-0350.

(2) A *good faith effort* includes taking such actions as:

(a) Supplying *sufficient information* for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. *Sufficient information* includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the caretaker relative, regarding any noncustodial parent of a needy child:

(A) Full legal name and nicknames.

(B) Social Security Number.

(C) Current or last known address.

(D) Current or last known employer, including name and address.

(E) If a student, current or last known school.

(F) Criminal record, including where and when incarcerated.

(G) Date of birth, or age.

(H) Race.

(I) Any known group or organizational affiliations.

(J) Names and addresses of close friends or relatives.

(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(3) If the client has the opportunity but is unable to show he or she has *good cause* under OAR 461-120-0350, the Department will apply penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For benefit groups not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the filing group is ineligible.

(b) For benefit groups receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25% for the first month following the month in which failure to comply is determined.

(B) 50% for the second month following the month in which failure to comply is determined.

(C) 75% for the third month following the month in which failure to comply is determined.

(D) 100% (total ineligibility for the benefit group) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(4) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-120-0345

Clients Required to Obtain Medical Coverage

This rule explains the obligation of clients to obtain medical coverage for members of the benefit group. A client is excused from the requirements of section (1)(a) of this rule for good cause defined in OAR 461-120-0350.

(1) To be eligible for any program except ERDC or FS, each adult client must:

(a) Assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent of a child in the benefit group to provide health care for that child.

ADMINISTRATIVE RULES

(b) Make a good faith effort to obtain available coverage under Medicare.

(2) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM (except OSIPM-MN), REFM, and SAC programs, once informed of the requirement, a person who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). For OSIPM, the client is not required to incur a cost for the health insurance.

(3) In the OHP-OPU program the following applies:

(a) A person who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the person must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Persons eligible for benefits through an Indian Health Program; or

(D) Persons eligible under the CAWEM program.

(4) A person who fails to meet the requirements of section (1), (2) or (3) of this rule is removed from the need group except that in the OHP program the person is removed from the benefit group.

(5) In the case of a person failing to meet the requirements of section (1)(a) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

(7) If the TANF grant is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without the reduction due to the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0010

Assumed Eligibility for Medical Programs

This rule explains when clients are assumed eligible for certain medical programs because they receive or are deemed to receive benefits of another program.

(1) Except for clients disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345 and clients who do not meet the citizenship or alien status requirements set forth in OAR 461-120-0125, the following people are *assumed eligible* for MAA:

(a) People receiving or eligible to receive TANF cash benefits.

(b) People whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) People who receive no TANF cash benefits because of their failure to comply with the requirements for recipients of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) People in the Assessment Program (see OAR 461-135-0475).

(e) Children in a benefit group whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(2) Pregnant women who are eligible for and receiving benefits the day the pregnancy ends are *assumed eligible* for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) Pregnant women who were eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM or SAC program but become ineligible during the pregnancy are *assumed eligible* for Medicaid.

(4) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC benefits is *assumed eligible* for medical benefits. A child who is continuously a member of his or her mother's household group is eligible under this section until the end of the month the child turns one year of age.

(5) The following children are *assumed eligible* for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) Children in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The following groups of people are *assumed eligible* for OSIPM:

(a) Recipients of SSI benefits.

(b) People deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)). These are disabled people whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(7) Clients who receive both benefits under Part A of Medicare and SSI benefits are *assumed eligible* for the QMB-BAS program.

(8) Clients are *assumed eligible* for REFM if:

(a) They are receiving cash assistance through the REF program; or

(b) They are ineligible for cash assistance through the REF program only because of income or resources.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: Ch. 859, OL 1999

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0730

Specific Requirements; QMB

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for QMB-DW program, a person must be eligible for Part A of Medicare as a qualified disabled worker under Section 1818(A) of the Social Security Act. These are people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They are not eligible for MAA, MAF or OSIPM at the same time they are eligible for QMB benefits.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in nursing facilities, ICF/MRs or hospitals) are not eligible for QMB-SMB if they have income greater than 120% and less than or equal to 135% of the Federal Poverty Level (FPL).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, but is over income because of SSB cost-of-living increases after July 1977, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

ADMINISTRATIVE RULES

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) To determine the SSB amount the client received when last eligible for SSI or the state supplement, the cost-of-living increases for SSB are deducted from the current SSB level. The amount of the increase is determined by multiplying the current SSB amount by the number that corresponds to the month the client last received SSI (see table in section (4) of this rule). The resulting total is added to any other countable income.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Table not printed See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0830

Eligibility for Disabled Adult Children; OSIPM

Clients age 18 or older who are blind or disabled and who become ineligible for SSI because they begin receiving (or receive an increase in) children's SSB are eligible for OSIPM benefits. This rule does not apply to a person's eligibility prior to July 1, 1987.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0832

Estate Administration; Definitions

Effective July 18, 1995, for purposes of ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. § 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0835 through 461-135-0845 to recoveries and claims made pursuant to ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340.

(1) Assets means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) Assign means a Person who acquires an interest in Real or Personal Property or an Asset pursuant to a written or oral assignment of such Real or Personal Property or Asset from a Person with the legal right to assign it.

(3) Bona Fide Purchaser for Value means any Person who provides consideration, including money or property, to a seller or transferor of Real Property or Personal Property equal to the fair market value of the Real or Personal Property sold or transferred.

(4) Consideration Furnished Test means the method by which the ownership of Real or Personal Property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(5) Convincing Evidence includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(6) Disabled child means a natural or adopted son or daughter of the deceased client, of any age, who met SSI disability criteria and was permanently and totally disabled at the time the Department's claim was asserted, and who presented evidence to the Department substantiating the disability within two years after the Department asserted the claim.

(7) Estate means:

(a) With respect to the collection of payments made for services provided on or after July 18, 1995, all Real Property, Personal Property or other Assets wherever located in which a deceased individual had any Legal Title or ownership or beneficial interest at the Time of Death, including Real Property, Personal Property or Assets conveyed by the deceased individual to a Survivor, Heir or Assign of the decedent through Joint Tenancy, Tenancy In Common, Survivorship, Life Estate, Living Trust, an annuity purchased on or after April 1, 2001, or other similar arrangement.

(b) With respect to the collection of payments made for services provided before July 18, 1995, all Real and Personal Property and other Assets included within an individual's estate as such estate is defined by applicable state probate law.

(8) Heir means any individual, including the surviving spouse, who is entitled under Intestate Succession to the Real Property, Personal Property, and Assets of a decedent who died wholly or partially Intestate.

(9) Interest means any form of legal, beneficial, equitable or ownership interest.

(10) Intestate means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(11) Intestate Succession means succession to Real Property, Personal Property or Assets of a decedent who dies Intestate or partially Intestate.

(12) Joint tenancy means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(13) Legal Title means legal ownership by a Person.

(14) Life Estate means an Interest in Real or Personal Property that terminates upon the death of a measuring life.

(15) Living Trust means a revocable inter vivos trust.

(16) Medical Institution means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(17) Ownership Documents means any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or Legal Title held by a Person.

(18) Permanently Institutionalized means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(19) Person means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(20) Personal Property means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(21) Real Property means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(22) Recipient of Property means:

(a) Any Survivor, Heir, Assign, devisee under a will, beneficiary of a trust, transferee or other Person to whom Real Property, Personal Property or other Assets pass upon the death of the decedent either by law, Intestate Succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such Real Property, Personal Property or Asset, or proceeds from the sale thereof, through any form of conveyance, that is not a Bona Fide Purchaser for Value.

(23) Survivor means any Person who, as a co-tenant, is automatically entitled to an expanded share of Real or Personal Property upon the death of a fellow co-tenant.

ADMINISTRATIVE RULES

(24) Survivorship means an interest in Real or Personal Property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(25) Tenancy in Common means ownership of Real or Personal Property by an individual together with one or more other Persons which ownership Interest shall not pass by Survivorship upon the death of the individual.

(26) Time of Death means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall Time of Death be construed to mean a time after which an Interest in Real or Personal Property or other Assets may:

(a) Pass by Survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(27) Value means the fair market value as of the Time of Death of the Medicaid recipient or the Time of Death of the surviving spouse, if estate recovery is deferred until the surviving spouse dies. Fair market value is the price at which Real or Personal Property would change hands between a willing buyer and a willing seller. In the event the Real or Personal Property was not reported to the Department by the deceased Medicaid recipient, the Value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 411.105

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-0847

Forms; Request for Notice of Transfer or Encumbrance; Termination of Request for Notice of Transfer or Encumbrance; Notice of Transfer or Encumbrance

(1) The forms set forth in this rule are adopted in accordance with chapter 638, Oregon Laws 2003.

(2) Request for Notice of Transfer or Encumbrance Form. [Form not included. See ED. NOTE.]

(3) Termination of Request for Notice of Transfer or Encumbrance Form. [Form not included. See ED. NOTE.]

(4) Model Form — Notice of Transfer or Encumbrance Form. [Form not included. See ED. NOTE.]

(5) These forms are available at <http://dhsforms.hr.state.or.us/forms/databases/findforms.htm>. At the Find a form window in the Form Number field, type in the four-digit form number and click on search.

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

Stat. Auth.: Ch. 638, OL 2003

Stats. Implemented: Ch. 638, OL 2003

Hist.: SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-1120

Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPNs are exempt from the premium requirement:

(a) Members of a federally recognized Indian tribe, band or group.

(b) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act.

(c) Persons eligible for benefits through an Indian Health Program.

(d) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) A pregnant client becomes an HPN client following the end of her assumed eligibility period provided for in OAR 461-135-1100.

(c) An HPN client becomes eligible for another program (for example, GA, OSIP or TANF).

(d) An HPN client leaves the filing group.

(e) OHP cases are combined during their certification periods.

(f) An HPN client's exemption status changes.

(g) An HPN client is no longer a member of the benefit group.

(5) For premiums billed on or after July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 20th day of the month after the benefit month

for which the premium was billed. For premiums billed prior to July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 25th day of the month after the benefit month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-135-1130

Disqualification for Nonpayment of OHP Premium

(1) Disqualification for failure to pay a premium on time. Clients are disqualified from receiving OHP benefits for failure to pay an OHP premium required by OAR 461-135-1120. Clients who are disqualified are ineligible under the OHP-OPU program. The disqualification affects only non-exempt HPN clients applying for or receiving benefits under the OHP-OPU program as follows:

(a) A non-exempt HPN applicant is disqualified if the applicant has an OHP premium arrearage.

(b) All non-exempt HPN recipients in a benefit group are disqualified if a required OHP premium for the group is not paid on time.

(c) A non-exempt HPN applicant is disqualified when joining an OHP filing group that includes a person with an OHP premium arrearage.

(2) Duration of the disqualification:

(a) A disqualification resulting from a premium arrearage incurred prior to February 1, 2003, remains in effect until the arrearage is paid or is waived in accordance with this rule.

(b) A disqualification resulting from a premium billed after February 1, 2003, remains in effect until the premium is paid and for a minimum of six months. The six-month disqualification period starts the first day of the month after the month in which the payment was required to be paid to be considered on time.

(c) A disqualification resulting from a non-exempt HPN applicant joining an OHP filing group that includes a person with a premium arrearage remains in effect until the arrearage is paid unless the entire arrearage was incurred prior to February 1, 2003, and is waived in accordance with this rule.

(3) Only for premiums billed before February 1, 2003, an arrearage is canceled and there is no disqualification based on the arrearage if the applicant is otherwise eligible for OHP and any of the following is true:

(a) The financial group has no income in the budget month and had no income in the prior two months.

(b) One of the following occurred either during the certification period in which the arrearage occurred or during the current budget month:

(A) A member of the filing group was the victim of a crime resulting in the loss of income or resources.

(B) A member of the filing group was the victim of domestic violence.

(C) The filing group was the victim of a natural disaster.

(D) A member of the filing group died.

(E) The filing group was homeless or lost their housing.

(c) The arrearage was incurred while the client was exempt from the requirement to pay a premium (see OAR 461-135-1120).

(d) The arrearage is a debt that has been stayed in a bankruptcy proceeding.

(e) The arrearage is over three years old.

(4) Any premium arrearage over three years old is canceled and no disqualification is based on the arrearage.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.025

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2003(Temp), f. & cert. ef. 9-15-03 thru 12-31-03; SSP 31-2003(Temp) f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0020

Prorated Standards; Adjusted Number in Household

Prorated standards are used only in the no-adult tables and the non-SSI/OSIP table. Prorated standards should not be applied to OSIPM waived cases. The no-adult tables are used when there are no adults in TANF need groups. Prorated standards are based on the number of people in the need group, compared to the adjusted number in the household group. To determine the adjusted number in the household to apply to the tables, use the total number in the household minus the following:

(1) Unborns, unless included in the need group.

ADMINISTRATIVE RULES

(2) Clients receiving long-term care or waived home and community-based care.

(3) Foster children.

(4) Children receiving adoption assistance.

(5) Live-in attendants who live with the filing group solely to provide necessary medical or housekeeping services and are paid to provide these services.

(6) Landlords and tenants. A landlord/tenant relationship exists if one person pays another at fair market value for housing. In addition, all the following apply:

(a) The filing group must live independently from the landlord or tenant.

(b) The filing group must have and use sleeping, bathroom and kitchen facilities separate from the landlord or tenant.

(c) If bathroom or kitchen facilities are shared, it must be a commercial establishment that provides either room or board or both for fair market value compensation.

(7) Additionally for OSIP and OSIPM, do not count recipients of EXT, GA, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC or TANF.

Stat. Auth.: ORS 411.070

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1998, f. & cert. ef. 10-1-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0030

Income and Payment Standards; MAA, MAF, REF, SAC, TANF

For MAA, MAF, REF, SAC and TANF, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For need groups in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the REF and TANF programs, when the need group contains no adults, the "no-adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in (A) by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from (B) by the number of people in the need group. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) For the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of people in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070 & 418.045

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0035

Cooperation Incentive Payment Standard; TANF and REF

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461-135-0210 explains who is eligible for this incentive payment.

(2) When there is an adult in the need group, the incentive payment is based on the number of people in the need group as follows:

(a) One person — \$26

(b) Two people — \$32

(c) Three people — \$43

(d) Four people — \$52

(e) Five people — \$52

(f) Six people — \$75

(g) Seven people — \$75

(h) Eight or more people — \$109

(3) When there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group rather than in the need group. For instance, if there are three people in the household group, the amount used for this calculation is \$37.

(b) The figure obtained in subsection (a) is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) is multiplied by the number of people in the need group. The result is the incentive payment.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

This rule covers child care in the ERDC, JOBS, JOBS Plus, OFSET and TANF programs.

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged birth through 12 months.

(b) Toddler: A child aged 1 year through 30 months.

(c) Preschool Child: A child aged 31 months through 5 years.

(d) School Child: A child aged 6 years or older.

(e) *Special needs child*: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Professional Development Registry (PDR) entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The *Enhanced Group Rate* applies to child care provided in a residential dwelling that is certified by the Child Care Division as a *Group Child Day Care Home*. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(e) The *Enhanced Center Rate* applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the PDR entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the PDR entry level training requirements noted in section (2)(b)(A) of this rule.

(B) New staff must meet the PDR entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

ADMINISTRATIVE RULES

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of section (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of section (2)(b), (c), (e) or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS, OFSET and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS or OFSET program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in section (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is \$25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows: $y = k + (b X m^x)$

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons: k = -30

(B) 3 persons: k = -55

(C) 4 persons: k = -50

(D) 5 persons: k = -51

(E) 6 persons: k = -80

(F) 7 persons: k = -92

(G) 8 or more persons: k = -103

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons: b = 18.0

(B) 3 persons: b = 23.0

(C) 4 persons: b = 20.9

(D) 5 persons: b = 20.6

(E) 6 persons: b = 33.2

(F) 7 persons: b = 33.2

(G) 8 or more persons: b = 40.4

(e) The constant m is determined by the number of people in the need group, as follows:

(A) 2 persons: m = 1.001885

(B) 3 persons: m = 1.001550

(C) 4 persons: m = 1.001380

(D) 5 persons: m = 1.001250

(E) 6 persons: m = 1.000990

(F) 7 persons: m = 1.000910

(G) 8 or more persons: m = 1.000795

(11) Effective October 1, 2003, a client's copay is limited to \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

ADMINISTRATIVE RULES

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income/payment standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2003 federal poverty level for a family of one. This 250 percent limit equals \$1,871 per month or \$22,452 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$900 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0270

Payment Standard for NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in nonstandard living arrangements, the OSIP/OSIPM Payment Standard is allocated as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0300

Shelter-in-Kind Standard

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$352 for total shelter or \$211 for housing costs only.

(b) Living with others, \$165 for total shelter or \$99 for housing costs only.

(2) For a couple:

(a) Living alone, \$429 for total shelter or \$257 for housing costs only.

(b) Living with others, \$157 for total shelter or \$94 for housing costs only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0526

Special Need; Community Transition Services; GA, OSIP and OSIPM

(1) In the GA, OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary to return the following clients to the community:

(a) Clients leaving a nursing facility.

(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital, who meet one of the service priority levels of OAR 411-015-0015(1).

(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-155-0680

Special Need; Supplemental Telephone Allowance

(1) In the GA, OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary to return the following clients to the community:

(a) Clients leaving a nursing facility.

(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital, who meet one of the service priority levels of OAR 411-015-0015(1).

(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: 411.060

Stats. Implemented: 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-160-0580

Excluded Resource; Community Spouse Provision On or After 10/1/89 (Except OSIP-EPD and OSIPM-EPD)

In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(1) Determine if the couple's resources make the institutionalized spouse eligible or ineligible for OSIPM as follows:

(a) Step 1: Determine what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Use OSIP policy to determine which of the couple's resources were countable resources. The rules used to determine whether a community spouse's resources are countable are the same rules used with respect to an OSIP or OSIPM applicant or recipient.

(B) Combine both spouses' countable resources.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) Step 2: Calculate one half of what the couple's combined countable resources were at the beginning of the continuous period of care. Treat the community spouse's half of the couple's combined resources as a constant amount when determining eligibility.

ADMINISTRATIVE RULES

(c) Step 3: Determine the community spouse's resource allowance. The community spouse's resource allowance is the largest of the three following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$92,760.

(B) \$18,552 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule, (OAR 461-160-0580(1)(c)(C) and (1)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance.

(d) Step 4: Determine what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. Use the procedure in Step 1.

(e) Step 5: Subtract the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) Step 6: Compare the remaining resources to the OSIP resource standard for one person. If the remaining resources are at or below the standard, the institutionalized spouse is eligible. If the remaining resources are above the standard, the institutionalized spouse is not eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$92,760) plus the OSIP resource standard for one person.

(B) \$18,552 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance for this rule OSIP resource standard for one person. (See section (1)(c)(C) of this rule for definition of court-ordered community spouse resource allowance.)

(D) An amount which, if invested, would produce income equal to the difference between the amounts described in subparagraphs (i) and (ii) of this paragraph.

(i) The maintenance needs allowance computed in accordance with OAR 461-160-0620(5).

(ii) The difference between the following:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The greater of the personal needs allowance and the applicable OSIP standard for the institutionalized spouse.

This paragraph (D) applies only if the amount described in subparagraph (i) is larger than the amount described in subparagraph (ii).

(2) Once eligibility has been established, resources equal to the community spouse's resource allowance (from section (1)(c) above) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060, 411.700

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

Deductions from income in the OSIP and OSIPM programs are made for clients specified in section (1) as explained in sections (1) through (9) of this rule. The client's liability is determined according to section (10).

(1) Deductions are made in the order below for clients who do not receive SSI and who:

- (a) Reside in or are entering a long-term care facility; or
- (b) Receive Title XIX waived services.

(2) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs. No earned income deduction is allowed for OHP.

(3) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(4) One of the following need standards is deducted:

(a) A \$30 personal needs allowance for clients in long-term care.

(b) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(c) The OSIP maintenance standard for clients who receive waived services.

(5) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(a) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The greater result is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(b) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(c) Calculation method 2:

(A) Step 1 — Determine the maintenance needs allowance. \$1,515 is added to the amount over \$455 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,319, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(6) A dependent income allowance is deducted for each eligible dependent as follows:

(a) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,515. To determine the eligible dependent's income allowance:

(A) The eligible dependent's monthly income is deducted from \$1,515.

(B) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(b) For a case with no community spouse:

(A) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(B) The TANF standard is not reduced by the dependent's income.

(7) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(8) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(9) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(10) The client liability is determined as follows:

(a) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(b) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-

ADMINISTRATIVE RULES

1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-165-0030

Concurrent and Duplicate Program Benefits

(1) A client cannot receive benefits from the Department of the same type (that is, cash, medical, or food stamp benefits) for the same month as a member of two different benefit groups or from two separate programs except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) If a GA client becomes eligible for TANF, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(b) A TANF recipient may receive ERDC for children who are in the household group but cannot be included in the TANF filing group.

(c) A client may receive EA, HSP and TA-DVS benefits and cash payments from other programs for the same time period.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) A TANF benefit group when living with a nonneedy caretaker relative, if the caretaker relative is not the child's parent.

(B) An OSIP-AB benefit group.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) Clients in the Food Stamp program who leave a filing group that includes a person who abused them and enter a shelter or safe home for victims of domestic violence may receive food stamp benefits twice during the month they enter the shelter or safe home.

(f) A QMB-BAS client may also receive medical benefits from EXT, MAA, MAF, OSIPM or SAC.

(2) A client cannot receive benefits of the same type (that is, cash, medical, or food stamp benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash and medical benefits may be authorized for a client in the Assessment Program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) A client cannot receive OHP benefits while receiving a subsidy through the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740 (FHIAP).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100 & 411.117

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-170-0010

Reporting Changes; When Changes Must Be Reported

(1) When a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) Changes reported outside the MRS or SRS must be reported within 10 days of occurring. A change of income is considered to occur as follows:

(A) For earned income, the change occurs upon the client's receipt of the first paycheck from a new job, on the client's receipt of the first paycheck reflecting a change in the rate of pay, or on the last day of employment in the case of a job separation.

(B) For unearned income, the change occurs the day the client receives the new or changed payment.

(b) Changes required to be reported through the MRS must be reported on the Monthly Report Change form designated by the Department and according to MRS requirements. Non-income changes must be reported according to OAR 461-170-0015.

(c) Clients using APR must report changes according to OAR 461-170-0015 and 461-170-0020. For clients using APR who report changes in amount of income outside the Periodic Review form, act on the change as soon as notice requirements allow.

(d) Clients using the semiannual reporting system (SRS) must report changes according to OAR 461-170-0020.

(2) For all programs except the Food Stamp program, changes are considered reported effective the date the information is received by a DHS office. In the Food Stamp program, changes are considered reported effective the date the information is received by an office that administers the Food Stamp program.

(3) Changes reported for one program are considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-194, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-175-0200

Notice Situations; General Information

(1) For all programs except OHP and the Assessment Program, unless stated differently in a specific rule, the Department mails or otherwise provides the client with (sends) a decision notice as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical, or a request for a shelter payment under the JOBS program is approved or denied.

(b) A timely continuing benefit decision notice is sent whenever benefits are reduced or closed, or the method of payment changes to protective, vendor or two-party.

(2) A notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice, unless the delay resulted from the client requesting a hearing. If the notice is void, a new notice is sent to inform the financial group of a new date on which their benefits will be reduced or closed.

(3) A notice approving MAA, MAF, REF, REFM or TANF benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS Program entry.

(4) For ADCM-EA and EA, a basic decision notice is sent for all situations.

(5) For OHP:

(a) A basic decision notice is sent when benefits are approved or denied, when the premium amount changes, and when benefits are ended because the OHP certification period has ended.

(b) Unless otherwise provided for, a timely continuing benefit decision notice is sent whenever benefits are otherwise reduced or closed.

(6) For the Assessment Program, a basic decision notice is sent when payment for basic living expenses is denied. No other notices are required for this program.

(7) No decision notice is required if:

(a) Benefits are ended because the only eligible person(s) is deceased; or

(b) A hearing order upholds a Department decision, and notice was sent before the client requested the hearing.

(c) A request for a support service is approved or denied in the JOBS program, except as provided in section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-180-0070

Effective Dates; Initial Month Cash Benefits

(1) In the REF and TANF programs, the effective date for the initial month of cash benefits is as follows:

(a) For a client required to participate in the Assessment program, it is the later of the following:

(A) The day the Assessment program ends; and

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day.

(b) For a client not required to participate in the Assessment program (see OAR 461-135-0475) and not subject to OAR 461-135-0180 (Specific Requirements; TANF Pay-After-Performance), it is the day the client meets and verifies all eligibility requirements.

ADMINISTRATIVE RULES

(c) In the TANF program, if the only eligible child is an unborn, it cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a provider-direct child care payment (see OAR 461-165-0190), it is the first of the month in which TANF benefits begin.

(2) For GA clients who do not need services to maintain themselves in the community, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(3) For OSIP clients who do not need services to maintain themselves in the community, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date;

(b) The date all eligibility requirements are met.

(4) For GA and OSIP applicants who require services to maintain themselves in the community, the effective date for starting cash benefits is whichever of the following occurs last:

(a) The date the service plan is implemented;

(b) The date the client requests benefits.

(5) In the EA program, the effective date for opening the case is the day benefits are issued to the benefit group. For benefit groups whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(6) In the ERDC-BAS and ERDC-SBG programs, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For benefit groups that received TANF within the 30 days before applying for ERDC, the effective date is the first of the month following closure of their TANF benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-180-0105

Effective Dates; Reductions Delayed Pending a Hearing Decision

(1) If a proposed reduction or closure of benefits or a proposed disqualification arising out of an employment program is delayed because the client requested a hearing, the proposed action takes effect in accordance with sections (2) and (3) of this rule.

(2) A disqualification is effective in the following programs on the first day of the month following issuance of a final order upholding the disqualification:

(a) In the JOBS and JOBS Plus programs.

(b) In the FS program, if the disqualification is a result of any of the following:

(A) A job quit.

(B) Failure to comply with a requirement in OAR 461-130-0320.

(C) Failure to comply with a requirement of the JOBS or UC employment program.

(c) In the OHP-OPU program.

(3) All other reductions or closures are effective in accordance with the notice that precipitated the closure.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 31-2003(Temp), f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-190-0110

Definitions for the JOBS Program

This rule contains definitions of terms used to describe the JOBS Program. When used in this division of rules as defined in this rule, the terms appear in italics.

(1) *Activity*: An action or set of actions to be taken by the client, as specified in the case plan, intended to reduce barriers and increase the likelihood of self sufficiency, employment, job retention, and wage enhancement. Activities are listed and described in OAR 461-190-0161.

(2) *Barrier*: A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(3) *Component*: A set of one or more activities of the JOBS Program. Components of the JOBS program are basic education, job readiness, job search, job skills training, JOBS Plus, microenterprise, OJT, program entry, sheltered or supported work, UN work program, work experience, work supplementation, and vocational training. Components are described in OAR 461-190-0161.

(3) *Employer contact*: A client communication with an employer or employer's representative through a visit, phone call or mail to request consideration for employment.

(4) *Progress (good or satisfactory)*: A client participating in an education or training activity makes good progress or satisfactory progress by meeting a standard of achievement measured in a period of less than one year (such as a term or quarter). The standard is established in writing by the educational institution or training program consistent with its evaluation standards. The appropriate state or local education agency and the Department must approve the standard before it is applicable with respect to a client. Standards must include:

(a) In an education *activity*, both a qualitative measure of progress, such as a specific grade point average, and a quantitative measure, such as a time limit for completion of the activity.

(b) In a training activity, both a qualitative measure of progress, such as gains in competency or proficiency levels, and a quantitative measure, such as a time limit for completion of the activity.

(5) *Subsidized employment*: A job in which the wages paid to an employee are subsidized by a state or local employment and training program.

(6) *Support services*: Services that case-managed clients need to participate successfully in activities outlined in their case plan, to seek and maintain employment, or to remove barriers.

(7) *Teen parent*: Custodial parent under age 20.

(8) *Transition services*: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-190-0161

JOBS Components and Activities

This rule contains definitions of the components and activities of the JOBS program. When used in this division of rules as defined in this rule, the terms appear in italics.

(1) *Assessment*: An activity of the *program entry component* that involves gathering information to identify a client's strengths, interests, family circumstances, status in the JOBS Program, and vocational aptitudes and preferences and to mutually determine an employment goal, the level of the client's participation in the JOBS Program, and which *support services* are needed.

(2) *Basic education*: A *component* intended to ensure functional literacy for all JOBS clients. *Basic education activities* are high school attendance, *English as a second language* (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The *component* is discussed in OAR 461-190-0171 and 461-190-0181.

(3) *BASIS testing*: An activity in the *program entry component*. The BASIS test establishes the client's functional literacy level.

(4) *Case plan* (formerly also known as an *employment development plan* (EDP)) — and also known as a personal plan or personal development plan):

(a) A written outline, developed by the client and case manager, with input from partners as appropriate, listing *activities* and goals for the client. The *activities* and goals are identified during the *assessment* and are intended to reduce the effect of *barriers* to the client's self sufficiency, employment, job retention, and wage enhancement. The *case plan* also identifies the support service payments the Department will make to help the client

ADMINISTRATIVE RULES

complete the plan. Completing a *case plan* is an activity of the *program entry* component.

(b) *English as a second language (ESL)*: An activity in the *basic education component*. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(c) *Job readiness*: A *component* designed to prepare clients to compete in the local labor market. The sole activity is *life skills*.

(d) *Job search*: A *component* that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. The *component* is discussed in OAR 461-190-0201.

(e) *Job skills training*: A *component* designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. The *component* and *activity* are both called *job skills training*.

(f) *JOBS Plus program (JOBS Plus)*: A component that provides TANF clients with on-the-job training and pays their benefits as wages. See the rules at OAR 461-190-0401 and following:

(A) *Life skills*: The activity of the *job readiness component*. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(B) *Microenterprise*: A *component* in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(C) *On-the-job training (OJT)*: A *component* and *activity* in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the participant's wages, for those training costs.

(D) *Program entry*: The component that includes all the *activities* that prepare a client to actively participate in the JOBS program. *Program entry activities* are *assessment*, *BASIS testing* and writing the initial *case plan*.

(E) *Self-initiated training*: Education or training started by a client before being selected to participate in the JOBS program, including full-time attendance at an institution of higher education or other school offering vocational or technical training. The *component* and *activity* are both called self-initiated training and are discussed in OAR 461-190-0191.

(F) *Sheltered work or supported work*: A *component* that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(G) *UN work program*: A *component* in which TANF clients work in *unsubsidized employment* and may also participate in another JOBS work site training activity.

(H) *Vocational Training*: A *component* of the JOBS Program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment. The training may not last longer than nine months.

(I) *Work experience*: A *component* in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. *Work experience* is available through private for-profit businesses, nonprofit organizations or public agencies. Participation in a specific work experience assignment cannot exceed nine consecutive months.

(J) *Work supplementation*: Up to six months of work-site training provided by an employer. The *component* and *activity* are both called *work supplementation*. In *work supplementation*, the Department subsidizes the participant's wages by diverting up to \$200 per month of the participant's cash benefits to the employer. Participants who do not have medical coverage through their employer remain eligible for EXT, MAA, MAF or REFM.

Stat. Auth.: ORS 411.060 & ORS 418.100
Stats. Implemented: ORS 411.060 & ORS 418.100
Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 27-1993(Temp), f. & cert. ef. 11-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 21-2003(Temp), f. 8-29-03, cert. ef. 9-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 25-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-190-0211

JOBS Support Payments and Services; Overview

(1) The Department supports clients by providing payment, when authorized in advance by the Department, for costs associated with the client's *case plan* and other costs incidental to obtaining and retaining a job and enhancing wages and benefits. Support payments are also available to cover costs incidental to employment, education, and training activities, when authorized in advance by the Department:

(a) For clients who become ineligible for TANF because they return to their parent's home;

(b) For clients to participate in substance abuse or mental health diagnosis, counseling or treatment programs;

(c) For JOBS program activities for non-citizens who are not eligible for TANF but are authorized to work; and

(d) For clients disqualified from the TANF program for failure to comply with the requirements of OAR 461-120-0350.

(2) Support payments described in section (1) of this rule are not part of the *grant of public assistance*.

(3) Clients who are in the evaluation control group of the JOBS program are not authorized to receive *support services*.

(4) A client at risk of qualifying for the TANF program may be eligible for one or more support payments (support) to help him or her retain a job when the client does not meet the income eligibility requirements for TANF. The support is limited to the amount needed to retain the job. The client is eligible for the support payment if:

(a) Loss of the job in question would result, within a month, in the client having income less than the TANF payment standard; and

(b) Without the support authorized by this section, the client would lose the job; with the support the client would not lose the job.

Stat. Auth.: ORS 411.060

Stat. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-190-0360

OFSET Payments

The Department will authorize payment for the following costs when directly related to a client's participation in the OFSET program:

(1) Not more than \$40 a month for transportation and other costs identified on the client's work search agreement. If public transportation is available, the Department may issue to the client bus passes or tickets (whichever is less costly) sufficient to enable the client to participate in the OFSET program.

(2) For all clients except TANF clients who volunteer to participate in OFSET, dependent care costs at the ERDC child care rates and limits of OAR 461-155-0150.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-195-0501

Definitions

The definitions in this rule apply to programs other than child care programs.

(1) An overpayment is a cash, medical or food stamp benefit received by or on behalf of a client, or a vendor payment made by the Department on behalf of a client, that exceeds the amount the client is eligible for; a cash benefit received by a client in the GA program for a month for which the client receives a retroactive SSI lump-sum payment; or a JOBS program support payment (see OAR 461-190-0211) used by a client for other than the intended purpose or issued when a client was not eligible for TANF as a result of fraud. It is not an overpayment when:

(a) Specifically so provided by rule;

(b) The benefit is paid pending a contested case hearing in a disqualification case unless the client was ineligible for the benefit for a reason other than the disputed disqualification; or

(c) A client is found eligible as a result of an error in judgment by the Department when judgement is permitted and the eligibility decision was based on the best information available to the client and the Department.

(2) Overpayments are categorized as follows:

(a) Except as otherwise provided in subsection (c) of this section, an *administrative error* overpayment is an overpayment caused by any of the following circumstances:

(A) The Department failed to reduce, suspend, or end benefits after timely receipt of information that required such action;

(B) The Department failed to use the correct benefit standard;

(C) The Department failed to compute or process a payment correctly;

(D) The Department failed to require a general assistance client to complete an interim assistance agreement; or

ADMINISTRATIVE RULES

(E) The Department committed a procedural error that was no fault of the filing group or authorized representative.

(b) An *administrative technical* overpayment is an overpayment in a program other than the Food Stamp program caused by a client's failure to register for the JOBS program, to have a social security account number, or to make a declaration of citizenship or alien status.

(c) A *client error* overpayment is an overpayment caused by misunderstanding or error on the part of a client, a client's receipt of unreduced benefits pending a hearing decision, a client's failure to return a benefit known by the client to exceed the correct amount, or a client's use of a JOBS program support payment (see OAR 461-190-0211) used for other than the intended purpose.

(d) In the Food Stamp program, a *provider error* overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

Stat. Auth.: ORS 411.060, 411.660 & 411.816

Stats. Implemented: ORS 411.630, 411.63 & 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

461-195-0561

Compromise of Overpayment Claims

(1) This rule establishes the Department's policy for compromising claims for overpayments in the Child Support, ERDC, Food Stamp, medical, and TANF programs. The Department will consider a request to compromise an overpayment claim only if the costs of administration and collection necessary to collect the account in full would likely exceed the current balance of the overpayment. In making the determination whether to compromise, the Department will consider the requester's ability to repay the overpayment in full within a reasonable time, as evidenced by such factors as:

(a) Income less than 200% of the federal poverty level (see OAR 461-155-0225(3)); or

(b) Income and liquid assets that are small compared with the outstanding overpayment.

(2) The following limitations and considerations apply to the Department's evaluation of a request to compromise an overpayment claim:

(a) The Department's authority to compromise may be limited by federal or state law.

(b) The Department will allow a compromised claim to be paid in installments over a period not to exceed 90 days.

(c) The Department will compromise a claim only once it is a liquidated claim; liquidated claim is described in OAR 461-195-0551.

(d) The Department will compromise a claim that exceeds \$20,000 only to the extent permitted by the rules of the Secretary of State.

(e) Except for an overpayment in the child support program, the Department will not agree to compromise a claim for less than 75 percent of the total amount of the claim. In the child support program, the amount for which a claim will be compromised will be determined following the applicable standards in OAR 137-055-6120(1).

(f) During the 12 months following the date of the compromise agreement, the Department reserves the right to collect the original, unmitigated claim through benefit reduction (see OAR 461-195-0551). This subsection does not apply to claims in the child support program.

(3) The following limitations apply to a request to compromise an overpayment:

(a) A request for compromise will be considered only if 36 months have passed since the requester was first notified of the overpayment.

(b) A request for compromise will be considered only if 12 months have passed since the requester was last eligible for and received benefits of the program in which the overpayment occurred or last received a direct provider payment for child care (see the rules in division 165 of this chapter of rules). This subsection does not apply to claims in the child support program.

(c) An overpayment caused by the requester's conduct is subject to compromise only if caused by his or her inadvertent error or by circumstances beyond his or her reasonable control.

(d) The Department will not compromise a claim if the requester has not made a good faith effort to repay the overpayment.

(e) The Department is more likely to approve a request to compromise if the requester has not previously caused an overpayment in the same program.

Stat. Authority: ORS 411.060, 411.635, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04

Adm. Order No.: SSP 34-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Amended: 461-193-0560

Subject: Rule 461-193-0560 is being amended to increase the monthly assistance grant that is given to refugees.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-193-0560

Full Monthly Payment Standards; Refugee Case Service Project

(1) The level of cash assistance benefit standard is determined by the number of participants in the case.

(2) The following is the monthly basic payment standard: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 6-1997, f. 5-28-97, cert. ef. 6-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 3-2003(Temp), f. & cert. ef. 2-14-03 thru 6-30-03; SSP 18-2003, f. & cert. ef. 7-1-03; SSP 27-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 34-2003, f. 12-31-03 cert. ef. 1-1-04

Adm. Order No.: SSP 35-2003(Temp)

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04 thru 3-31-04

Notice Publication Date:

Rules Amended: 461-115-0015, 461-120-0345, 461-135-0400, 461-135-0401, 461-135-1130, 461-155-0150, 461-155-0526

Subject: Rule 461-115-0015 is being amended to establish a process for maintaining a waiting list of prospective applicants for the Employment Related Day Care-Student Block Grant (ERDC-SBG) program. This rule establishes the procedures for notifying students, by random drawing initially and then based on the order in which the Waiting List Information form is received, of their opportunity to apply for program benefits. Students applying between January 1, 2004 and March 31, 2004 must be enrolled in school. Effective April 1, 2004 a student not enrolled in school must become enrolled no later than the next school term.

Rules 461-120-0345 and 461-155-0526 are being amended as Temporary rules to continue the Temporary rule change that originally went into effect November 1, 2003 because of the State of Oregon's legislature approved funding to restore a limited version of the former General Assistance program. This program provides cash assistance to individuals with severe physical or mental impairments who are waiting for their Supplemental Security Income (SSI) benefits to be approved by the Social Security Administration (SSA). The General Funds expenditures used to provide a monthly cash payment for indigent individuals with disabling conditions who meet the disability and financial requirements for GA are reimbursed to the State when the client becomes eligible for SSI.

Rule 461-135-0400 is being amended to clarify the qualification that the students enrolling in short-term training programs are not eligible for the Employment Related Day Care-Student Block Grant (ERDC-SBG) program. Students must be enrolled in a two or four year post-secondary institution that is eligible for federal financial aid. Student requirements to be registered for or attending classes has been increased from 9 to 12 quarter hours-or an equivalent number of credit hours in a semester system-that count toward graduation. The student requirement for quarter hours has increased from 27 to 36 completed hours toward graduation each academic year.

Rule 461-135-0401 is being amended to restore the Employment Related Day Care-Student Block Grant (ERDC-SBC) program.

Rule 461-135-1130 is being amended as a Temporary rule to continue the Temporary change that originally went into effect December 1, 2003 which clarified that an Oregon Health Plan (OHP) disqualification period for not paying a premium on time starts the first of the month after the notice period ends. The clarification ensures that the disqualification policy will be consistently applied to all clients required to serve a penalty.

Rule 461-155-0150 is being amended to add a monthly limit to child care subsidy when a child is in full-time care due to their care-

ADMINISTRATIVE RULES

taker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0015

Application Process; Waiting List for ERDC-SBG

(1) Eligibility for the ERDC-SBG program is subject to the availability of funds. A waiting list of prospective applicants is created and maintained by the Department.

(2) A random drawing from among those returning a “waiting list information” form during the initial period will establish the positions of prospective applicants on the waiting list to apply for funds. Following the initial application period, prospective applicants will be added to the waiting list following those remaining from the initial application period in order of the date and time the Department receives the “waiting list information” form.

(3) An appropriate number of persons from the initial waiting list are notified of their right to apply. Those not selected are notified of their position on the waiting list.

(4) Each month, on the basis of an estimate of available funds, an appropriate number of persons on the waiting list are notified of their right to apply.

(5) The processing time frame for the ERDC-SBG application is the same as that specified in OAR 461-115-0190, except that:

(a) The date the Department sends the notification described in section (3) of this rule establishes the date of request.

(b) If the Department does not receive an application within 15 days following the date of request, the applicant is dropped from the waiting list. An applicant who applies after the 15 days must reapply to be put on the waiting list and will be added to the waiting list in order of the date and time the Department receives the “waiting list information” form.

(c) Effective January 1, 2004 through March 31, 2004, if the student is not enrolled in school when his or her name comes up on the waiting list, the application processing time frame may not be extended to allow the student time to register and enroll in school.

(d) Effective April 1, 2004, if the student is not enrolled in school when his or her name comes up on the waiting list, the application processing time frame will be extended to allow the student time to register and enroll in school no later than the next school term.

(6) The Department updates the waiting list monthly by notifying all persons who have been on the waiting list for six months or more they must submit a new “waiting list information” form. A person on the waiting list who does not respond within 15 days from the date the notification is sent to the person or who indicates assistance with child care expenses is not needed will be removed from the waiting list.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 24-1992(Temp), f. & cert. ef. 8-18-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-120-0345

Clients Required to Obtain Medical Coverage

This rule explains the obligation of clients to obtain medical coverage for members of the benefit group. A client is excused from the requirements of section (1)(a) of this rule for good cause defined in OAR 461-120-0350.

(1) To be eligible for any program except ERDC or FS, each adult client must:

(a) Assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent of a child in the benefit group to provide health care for that child.

(b) Make a good faith effort to obtain available coverage under Medicare.

(2) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, REFM, and SAC programs, once informed of the requirement, a person who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). For GAM and OSIPM, the client is not required to incur a cost for the health insurance.

(3) In the OHP-OPU program the following applies:

(a) A person who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the person must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary

of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Persons eligible for benefits through an Indian Health Program; or

(D) Persons eligible under the CAWEM program.

(4) A person who fails to meet the requirements of section (1), (2) or (3) of this rule is removed from the need group except that in the OHP program the person is removed from the benefit group.

(5) In the case of a person failing to meet the requirements of section (1)(a) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

(7) If the TANF grant is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without the reduction due to the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-135-0400

Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program, at least one *caretaker* (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months.

(2) For the ERDC-SBG program:

(a) At least one *caretaker* must be a student without a bachelor's degree who is an undergraduate who has obtained a high school diploma or GED and has been formally admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and registered for or attending at least twelve quarter hours — or an equivalent number of credit hours in a semester system — that count toward graduation.

(b) A *caretaker* who meets the requirements of subsection (a) of this section must attend school for at least —

(A) Three out of four school quarters per academic year; or

(B) Two semesters per academic year.

(c) Students may use ERDC-SBG benefits for school — or employment-related child care needs during an absence from school or during a term in which they are attending school less than full time as defined in subsection (a)(A) of this section if:

(A) They intend to attend school full time the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) For students on the semester system, the summer break period.

(d) Students must maintain good standing according to the standards of the institution they are attending.

(e) Students must complete at least 36 quarter hours — or an equivalent number in a semester system — that count toward graduation each academic year.

(f) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

ADMINISTRATIVE RULES

(b) For ERDC-SBG only, the unemployed adult is physically or mentally unable to provide adequate child care.

(c) The unemployed adult is unavailable to provide care while participating in requirements of a *case plan* other than requirements associated with post-secondary education.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the *caretaker* to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-135-0401

ERDC-SBG; Effective Dates for the Program

(1) The ERDC-Student Block Grant (ERDC-SBG) program is not funded between October 1, 2002 and December 31, 2003. Notwithstanding other rules of the Department, the program is closed during this time period. The Department will not authorize or provide any benefit for any part of the period between October 1, 2002 and December 31, 2003, and the waiting list of prospective applicants referred to in OAR 461-115-0015(1) will not be maintained during that period.

(2) Effective January 1, 2004, the ERDC-Student Block Grant (ERDC-SBG) program is restored. The waiting list of prospective applicants referred to in OAR 461-115-0015(1) will be started for new applications. The Department will authorize and provide benefits to eligible persons effective February 1, 2004.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-2002(Temp) f. & cert. ef. 10-1-02 thru 3-30-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-135-1130

Disqualification for Nonpayment of OHP Premium

(1) Disqualification for failure to pay a premium on time. Clients are disqualified from receiving OHP benefits for failure to pay an OHP premium required by OAR 461-135-1120. Clients who are disqualified are ineligible under the OHP-OPU program. The disqualification affects only non-exempt HPN clients applying for or receiving benefits under the OHP-OPU program as follows:

(a) A non-exempt HPN applicant is disqualified if the applicant has an OHP premium arrearage.

(b) All non-exempt HPN recipients in a benefit group are disqualified if a required OHP premium for the group is not paid on time.

(c) A non-exempt HPN applicant is disqualified when joining an OHP filing group that includes a person with an OHP premium arrearage.

(2) Duration of the disqualification

(a) A disqualification resulting from a premium arrearage incurred prior to February 1, 2003, remains in effect until the arrearage is paid or is waived in accordance with this rule.

(b) A disqualification resulting from a premium billed after February 1, 2003, remains in effect until the premium is paid and for a minimum of six months. The six-month disqualification period starts the first day of the month after the notice period ends.

(c) A disqualification resulting from a non-exempt HPN applicant joining an OHP filing group that includes a person with a premium arrearage remains in effect until the arrearage is paid unless the entire arrearage was incurred prior to February 1, 2003, and is waived in accordance with this rule.

(3) Only for premiums billed before February 1, 2003, an arrearage is canceled and there is no disqualification based on the arrearage if the applicant is otherwise eligible for OHP and any of the following is true:

(a) The financial group has no income in the budget month and had no income in the prior two months.

(b) One of the following occurred either during the certification period in which the arrearage occurred or during the current budget month:

(A) A member of the filing group was the victim of a crime resulting in the loss of income or resources.

(B) A member of the filing group was the victim of *domestic violence*.

(C) The filing group was the victim of a natural disaster.

(D) A member of the filing group died.

(E) The filing group was homeless or lost their housing.

(c) The arrearage was incurred while the client was exempt from the requirement to pay a premium (*see* OAR 461-135-1120).

(d) The arrearage is a debt that has been stayed in a bankruptcy proceeding.

(e) The arrearage is over three years old.

(4) Any premium arrearage over three years old is canceled and no disqualification is based on the arrearage.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.025

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2003(Temp), f. & cert. ef. 9-15-03 thru 12-31-03; SSP 31-2003(Temp) f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

This rule covers child care in the ERDC, JOBS, JOBS Plus, OFSET and TANF programs.

(1) The following definitions apply to the rules governing child care rates:

(a) *Infant*: A child aged birth through 12 months.

(b) *Toddler*: A child aged 1 year through 30 months.

(c) *Preschool Child*: A child aged 31 months through 5 years.

(d) *School Child*: A child aged 6 years or older.

(e) *Special needs child*: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Professional Development Registry (PDR) entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The *Enhanced Group Rate* applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Group Child Day Care Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (*see* OAR 414-300-0000).

(e) The *Enhanced Center Rate* applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the PDR entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the PDR entry level training requirements noted in section (2)(b)(A) of this rule.

(B) New staff must meet the PDR entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of section (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of section (2)(b), (c), (e) or (f) of this rule.

ADMINISTRATIVE RULES

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS, OFSET and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and OAR 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS or OFSET program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in section (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is \$25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows:

$$y = k + (b \times m^x)$$

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons: k = -30

(B) 3 persons: k = -55

(C) 4 persons: k = -50

(D) 5 persons: k = -51

(E) 6 persons: k = -80

(F) 7 persons: k = -92

(G) 8 or more persons: k = -103

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons: b = 18.0

(B) 3 persons: b = 23.0

(C) 4 persons: b = 20.9

(D) 5 persons: b = 20.6

(E) 6 persons: b = 33.2

(F) 7 persons: b = 33.2

(G) 8 or more persons: b = 40.4

(e) The constant m is determined by the number of people in the need group, as follows:

(A) 2 persons: m = 1.001885

(B) 3 persons: m = 1.001550

(C) 4 persons: m = 1.001380

(D) 5 persons: m = 1.001250

(E) 6 persons: m = 1.000990

(F) 7 persons: m = 1.000910

(G) 8 or more persons: m = 1.000795

(11) Effective October 1, 2003, a client's copay is limited to \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-155-0526

Special Need; Community Transition Services; OSIP and OSIPM

(1) In the OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary to return the following clients to the community if they meet the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1):

(a) Clients leaving a nursing facility.

(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital.

(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food prepara-

ADMINISTRATIVE RULES

tion items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-1-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

Adm. Order No.: SSP 36-2003(Temp)

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04 thru 3-31-04

Notice Publication Date:

Rules Amended: 461-120-0125, 461-135-0700

Rules Suspended: 461-120-0125(T), 461-135-0700(T)

Subject: Rule 461-120-0125 is being amended to conform with the federal regulations regarding non-citizens. Specifically, non-citizens who meet the disability criteria for Supplemental Security Income (SSI) benefits are terminated from SSI after seven years if they have not attained citizenship status.

Rule 461-135-0700 is being amended. Allows GA for couples if one meets the impairment criteria for the GA program, and the spouse has a pending Title II claim and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-120-0125

Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597(1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) The following people meet the alien status requirements:

(a) American Indians born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, the following people meet the alien status requirements:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(4) In the BCCM, MAA, MAF, OHP, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen on or before August 22, 1996;

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; resided in the United States continuously for five years immediately prior to the date he or she became a qualified non-citizen; and did not leave the United States between August 22, 1996 and the date he or she became a qualified non-citizen; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(5) In the GA, GAM, OSIP, and OSIPM programs, a qualified non-citizen meets the alien status requirement by meeting any of the following criteria:

(a) By being a qualified non-citizen of a status not listed in section (4)(c) of this rule and meeting the disability-related eligibility criteria for SSI.

(b) By meeting eligibility criteria for SSI and by applying for SSI within seven years following the date he or she was granted an alien status listed in section (4)(c) of this rule.

(c) If it has been more than seven years since the client was granted an alien status listed in section (4)(c) of this rule, by meeting one of the alien status requirements listed in section (6) of this rule.

(d) By having been a recipient of SSI benefits on August 22, 1996 or by receiving SSI benefits based on an application filed before January 1, 1979.

(6) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS, OSIP or OSIPM program, a qualified non-citizen who meets the requirement in section (9) of this rule.

(7) Except as provided in sections (2), (4), (5), and (6) of this rule, non-citizens who entered the United States or were given qualified non-citizen status on or after August 22, 1996, are ineligible for the BCCM, GA, MAA, MAF, OHP, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status. They meet the alien status requirement following the five-year period.

(8) In the FS program, the following non-citizens meet the alien status requirement:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (c) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(9) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of cov-

ADMINISTRATIVE RULES

erage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS, OSIP, and OSIPM programs, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, ORS 411.816, ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.816, ORS 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

461-135-0700

Specific Requirements; GA, GAM

To be eligible for GA and GAM, a client must meet the requirements of this rule.

(1) The client must be:

(a) An individual, childless or not living with his or her child, who is unmarried or married and not living with his or her spouse; or

(b) Married, living with his or her spouse, and childless or not living with his or her child, if:

(A) Both meet the GA impairment criteria found in OAR 461-125-0510;

(B) One meets the impairment criteria of the GA program and the spouse is receiving disability benefits provided for in title II or title XVI of the Social Security Act;

(C) One meets the impairment criteria of the GA program and the spouse is deemed to be receiving disability benefits provided for in title II or title XVI of the Social Security Act; or

(D) One meets the impairment criteria for the GA program, the spouse is awaiting a disability determination under Title II of the Social Security Act, and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

(2) The client must not be eligible for OSIP, OSIPM, except for clients found eligible under OAR 461-125-0370(1)(c), REF or TANF.

(3) The client must not have a work history that would meet the eligibility requirements for disability insurance benefits provided for in title II of the Social Security Act.

(4) The client must:

(a) Complete the application process for SSI, cooperate with the Department in applying to the Social Security Administration for SSI, and appeal any denial of SSI made below the Administrative Law Judge level, and attend all appointments designated by the Department and relating to obtaining SSI.

(b) Sign an interim assistance agreement authorizing the Department to recover interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or initial post-eligibility payment. The following provisions are considered part of the interim assistance agreement:

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department can recover only a prorated amount of the interim GA cash benefit.

(C) If the Department can not stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 4-1997(Temp), f. 4-30-97, cert. ef. 5-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. & cert. ef. 7-1-02, 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04

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

Adm. Order No.: SPD 20-2003

Filed with Sec. of State: 12-22-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Transferred: 309-041-2000 to 411-305-0010, 309-041-2010 to 411-305-0020, 309-041-2020 to 411-305-0030, 309-041-2030 to 411-305-0040, 309-041-2040 to 411-305-0050, 309-041-2050 to 411-305-0060, 309-041-2060 to 411-305-0070, 309-041-2070 to 411-305-0080, 309-041-2080 to 411-305-0090, 309-041-2090 to 411-305-0100, 309-041-2110 to 411-305-0110, 309-041-2120 to 411-305-0120, 309-041-2130 to 411-305-0130, 309-041-2140 to 411-305-0140, 309-041-2150 to 411-305-0150, 309-041-2160 to 411-305-0160, 309-041-2170 to 411-305-0170, 309-041-2180 to 411-305-0180

Subject: These rulemaking actions implement permanent adoption of Family Support Services for Children with Developmental Disabilities rules following expiration on December 27, 2003 of temporary amendments to these rules. These amendments are taken to: (a) establish the rules in Chapter 411, Division 305; (b) make adjustments to the Family Support program based on reduced funding allocations required by the Department's approved 2003-2005 operating budget; (c) reflect service eligibility, service descriptions and other participation requirements acceptable under the Community Based Waiver #0117.90.R2.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-305-0010

Statement of Purpose, Principles, and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families.

(2) Principles. Family Support services are built on the principles of family support and self-determination. The principles of family support, as outlined in ORS 417.342, are based on the belief that all people, regardless of disability, chronic illness, or special need have the right to a permanent and stable family and that supporting families in caring for children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost-effective ways to foster and preserve family and community membership can be constructed and managed by the people receiving services. Family Support services foster and strengthen flexible networks of community-based, private, public, formal and informal, family-centered and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(3) Statutory authority. These rules are authorized by ORS 409.050, 410.070 and 417.346, and carry out the provisions of ORS 430.610 through 430.670, 427.005 through 427.007, and 417.340 through 417.350.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2000, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0020

Definitions

As used in OAR 411-305-0010 through 411-305-0180:

ADMINISTRATIVE RULES

(1) "Abuse" of a child is defined in ORS 419B.005 and includes, but is not limited to, physical abuse, neglect, threat of harm, mental injury, abandonment, and child selling.

(2) "Activities of Daily Living" or "ADL's" means the following activities that must be accomplished by or for an individual in the course of a normal day to ensure the individual's continued well-being:

- (a) Acquiring adequate nutrition;
- (b) Dressing and grooming;
- (c) Bathing and personal hygiene;
- (d) Toileting (including bowel and bladder care);
- (e) Personal mobility; and
- (f) Management of any prescribed medications and treatments.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator for Seniors and People with Disabilities or that person's designee.

(4) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and monitor services.

(5) "Case Manager" means an employee of the Department, a community developmental disability program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate and monitor Child and Family Support Plan services and acts as a proponent for children with developmental disabilities and their families.

(6) "Child" means an individual who is less than 18 years of age.

(7) "Child and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice and control by families of children with developmental disabilities in decisions relating to the supports that will meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or family to identify and use existing abilities, relationships and resources, strengthening naturally occurring opportunities for support at home and in the community; and

(f) Is conducted in manner and settings consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in home and community settings, or formally structured meetings.

(8) "Child and Family Support Plan" or "CFSP" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's family or other legal representative develops the CFSP with the assistance of the child's Case Manager. The CFSP articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's Case Manager and which involves the child to the extent normal and appropriate for his or her age and other persons who have been identified and invited to participate by the child's family or other legal representative. The CFSP is the only plan of care and services required by the Department for a child receiving Family Support services.

(9) "Community Developmental Disability Program" or "CDDP" means an entity responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(11) "Developmental Disability":

(a) Is always provisional for children five years and younger and means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; AND

(A) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(B) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (11)(a)(A) of this rule.

(b) Is always provisional for children six years and older and means:

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(i) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self care, receptive and expressive language, learning, mobility, self-directions; AND

(ii) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(iii) The individual is expected to need multiple, specialized supports indefinitely.

(12) "Direct Assistance Funds" means two categories of Family Support funds managed by CDDP's to assist families with purchase of supports for children with developmental disabilities according to each child's CFSP. Unique financial limitations and order of service apply to each Direct Assistance Fund:

(a) The General Assistance Fund is limited to CDDP-defined Plan Year costs for each child and, with some exceptions, is available on a first-come, first-served basis; and

(b) Department-Designated Funds are available only to children for whom the Department designates funds to the CDDP by written contracts which specify the children by name.

(13) "Employer-related supports" means activities that assist a family with directing and supervising provision of services described in a child's CFSP. Supports to a family assuming the role of employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(14) "Entry" means admission to a Department-funded service provider.

(15) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(16) "Family," for determining a child's eligibility for Family Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the child with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with disabilities who is related to one of the partners by blood, marriage, or legal adoption.

(17) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(18) "Family Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Child and Family Support Plans, and purchase of supports as social benefits required for a child to live in the family home. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services;

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities and capabilities;

(f) Prevent unwanted out-of-home placement and maintain family unity; and

(g) Whenever possible, reunite families with children with disabilities who have been placed out of the home.

(19) "Family Support Funds" means public funds contracted by the Department to the CDDP to assist families with purchase or development of supports for children with developmental disabilities.

(20) "Family Support Policy Oversight Group" or "Policy Oversight Group" means a group appointed by the CDDP to provide consumer-based leadership and advice regarding Family Support issues such as develop-

ADMINISTRATIVE RULES

ment of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on Family Support.

(21) "Family Support Principles" means principles outlined in ORS 417.340 and indicating that Family Support services:

(a) May use private and volunteer resources, publicly funded services and other flexible dollars to provide a family with the services needed to care for the family member with a disability or chronic illness.

(b) Must be sensitive to the unique needs, strengths and multicultural values of an individual and the family rather than fitting the individual and family into existing services.

(c) Must be built on a relationship of respect and trust that recognizes that families are better able to determine their own needs than have their needs determined by the state or a public agency.

(d) Must be provided in a manner that develops comprehensive, responsive and flexible support to families in their role as primary caregivers for family members with disabilities or chronic illnesses.

(e) Must focus on the entire family and be responsive to the needs of the individual and the family.

(f) May be needed throughout the lifespan of the individual family member living at home who has a disability or chronic illness.

(g) Should be available to families before they are in crisis.

(h) May be a service option offered to families, but not imposed on them.

(i) Should encourage maximum use of existing social networks and natural sources of support and should encourage community integration.

(j) Should not be confined to a single program or set of services but should be a philosophy that permeates all program and services.

(22) "Fiscal Intermediary" means a person or agency that receives and distributes Family Support funds on behalf of the family of an eligible child according to the child's CFSP. The fiscal intermediary responsibilities include payments to vendors as well as activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(23) "General business provider" means an organization or entity selected by the parent or other legal representative of an eligible child, and paid with Family Support funds that:

(a) Is primarily in business to provide the service chosen by the parent or other legal representative to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(24) "Guardian" means a parent for children less than 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the child.

(25) "Home" means a child's primary residence which is not licensed or certified by, and under contract with, the Department of Human Services to provide care to the child as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(26) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(27) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(28) "Independent Provider" means a person who is selected by a child's parent or other legal representative and paid with Family Support funds and who personally provides services to the child.

(29) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(30) "Integration" is defined in ORS 427.005 and means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(31) "Legal Representative" means the parent of a child, unless the court appoints another person or agency to act as guardian.

(32) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(33) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial,

and other needs of the child and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(34) "Plan Year" means twelve (12) consecutive months used to calculate what Family Support funds may be made available annually to support an eligible child. The initial Plan Year begins on the date the child's first CFSP after entry into Family Support services is signed by the child's parent or other legal representative and Case Manager. Subsequent Plan Years begin on the anniversary date of the approval of this initial plan.

(35) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(36) "Provider Organization" means an entity selected by a child's parent or other legal representative and paid with Family Support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(37) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(38) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom: The ability for an individual with a developmental disability together with freely-chosen family and friends to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority: The ability for a person with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy: The arranging of resources and personnel — both formal and informal — that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility: The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(39) "Social Benefit" or "Social Service" means a service provided to a family solely to assist a child with developmental disabilities to function in and around the home and to participate in activities comparable to that of a child of similar age who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an eligible child's current CFSP and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(d) Replace other governmental or community services available to child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(40) "Support" means assistance eligible children and their families require — solely because of the effects of developmental disability on the child — to maintain or increase the child's age-appropriate independence, to achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. This assistance is flexible and subject to change with time and circumstances.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2010, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0030

Eligibility for Family Support Services

(1) Non-discrimination. Families of children determined eligible according to OAR 411-305-0030(2) must not be denied Family Support services or otherwise discriminated against on the basis of age or diagnos-

ADMINISTRATIVE RULES

tic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) Eligibility. The CDDP of a child's county of residence may find a child eligible for the CDDP's Family Support services when the child has been determined eligible for Developmental Disability Services by the CDDP and either:

(a) Lives in the family home and does not receive other Department-paid in-home, community living, or family support services other than State Medicaid Plan services, adoption assistance, or short-term assistance provided to prevent out-of-home placement; or

(b) The child resides in Department-paid residential services and the Department has designated funds specifically to provide supports required for the child to return to the family home in the county served by the CDDP.

(3) Concurrent eligibility. Children must not be eligible for Family Support services from more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2020, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0040

Family Support Service Information and Entry

(1) Providing information about Family Support. The CDDP must develop and implement a process for informing families of eligible children about Family Support services. The process must include:

(a) Recording the date and time the child's parent or other legal representative is informed of, and requests, Family Support services;

(b) Providing accurate, up-to-date information about the CDDP's Family Support services to families who request Family Support services. This information must include but not be limited to:

(A) A declaration of Family Support services philosophy;

(B) Criteria for entry and for determining how much assistance with purchasing supports will be available;

(C) Common processes encountered in using Family Support services, including child and family-centered planning, evaluation, and how to raise and resolve concerns about Family Support services;

(D) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;

(E) A brief description of family responsibilities in regard to use of public funds;

(F) An explanation of family rights to select and direct the providers of services authorized through the eligible child's CFSP and purchased with Family Support funds from among those qualified according to OAR 411-305-0140 to provide supports; and

(G) An assurance that additional information about Family Support services will be made available at the family's request. Additional information may include, but is not limited to:

(i) A description of the CDDP's organizational structure;

(ii) A description of any contractual relationships the CDDP has in place or can establish to accomplish the Family Support service functions required by this rule; and

(iii) If applicable, a description of the relationship between the CDDP and its Family Support Policy Oversight Group.

(c) The CDDP must make information required in OAR 411-305-0040(1)(b)(A) through (G) available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

(2) Entry into Family Support services.

(a) An eligible child may enter Family Support services:

(A) When the CDDP determines that the eligible child is the next child to be served according to the priorities and order of service described in OAR 411-305-0040(2)(b) and that sufficient resources are available to initiate service; or

(B) At any time that Department-designated funds are made available through a Department contract with the CDDP specifically to provide supports required to prevent out-of-home placement of the eligible child.

(b) Order of service. Except as provided in OAR 411-305-0040(2)(c), eligible children may enter Family Support services as follows:

(A) For assistance with purchase of support through the General Assistance Fund, the CDDP may assign order of entry either according to when, according to the CDDP's records, the child's parent or other legal representative was informed of and requested Family Support services or the date of the child's placement on a wait list for services previously provided by the CDDP under OAR chapter 411, division 330, Comprehensive

In-Home Support for Adults with Developmental Disabilities, whichever is earliest.

(i) If no order for service can be determined according to OAR 411-305-0040(2)(b)(A) at the time services for children transition from Comprehensive In-Home Support provided under OAR chapter 411, division 330, to Family Support services provided under OAR chapter 411, division 305, then the names of all children whose families are known to have requested either Comprehensive In-Home Support or Family Support services and who are not eligible to enter Family Support services directly from Comprehensive In-Home Support services according to OAR 411-305-0040(2)(c) must be pooled and drawn at random to determine order of entry to Family Support services.

(ii) If more than one child's parent or other legal representative requests services at the same time, then the CDDP must assign order among those children according to random selection.

(B) For assistance with purchase of support through Department-Designated Funds, the child may enter Family Support services on a date agreed upon by the Department and the CDDP when funds to support the eligible child have been specifically contracted to the CDDP.

(c) Exception to order of service. To the extent that Family Support funds are available in the CDDP of each child's county of residence and to avoid disruption of services, children with In-Home Support Plans formulated according to OAR chapter 411, division 330 and current as of the Department-designated date of transition to Family Support services may directly enter Family Support services on that date.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2030, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0050

Family Support Service Duration and Exit

(1) Duration of Services. Once a child has entered a CDDP's Family Support services, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the child remains eligible for Family Support, annual CFSP's are developed and kept current, the need for service remains, and funds are available at the CDDP to continue services, except in the following cases:

(a) Short-term assistance. Families and children receiving assistance according to provisions of or OAR 411-305-0090(1)(c) will be short-term recipients of services. Services must not extend beyond the end date of the contract between the Department and the CDDP current at the time the CDDP offers such short-term assistance. Using this assistance must not affect a child's order of service for longer-term Family Support services without written approval of the child's parent or other legal representative.

(b) Changing county of residence. If a child and family move from the CDDP's area of service, the CDDP must arrange for services purchased with Family Support funds to continue, to the extent possible, in the new county of residence through the end date of the child's CFSP when the CFSP conforms to OAR 411-305-0080 and is current at the date of the move.

(2) Exit from Family Support services. A child must leave a CDDP's Family Support services:

(a) At the end of a service period agreed upon by all parties and specified in the CFSP;

(b) At the written request of the child's family or other legal representative to end the service relationship;

(c) At the end of the last day of the month during which the child turns 18;

(d) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP; or

(e) No less than thirty (30) days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate;

(B) Funds are no longer available for Family Support services in the family's county of residence; or

(C) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the CFSP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2040, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

ADMINISTRATIVE RULES

411-305-0060

Family Support Services Waiting List

The CDDP must maintain an up-to-date written list of eligible children and their families who have been assigned an order for service according to OAR 411-305-0040(2)(b), but have not yet received the services for which they are eligible.

(1) The list must include name and date of birth of each eligible child, name of parent or legal representative, assigned place in the order of service, dates services were requested (if known), and date of qualification for additional services based on exceptional need. Information from this list must be provided to the Department upon request.

(2) Re-assignment of order of service with change of county of residence. Despite assignment of order of service by one CDDP, when a child and family move outside the area of service of that CDDP, the child must be assigned placement in the order of Family Support services by the CDDP of the new county of residence according to the provisions of OAR 411-305-0040(2). If Family Support services are not immediately available, the child must be placed on the wait list for services from the new CDDP according to the new assignment in the order of service.

Statutory Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2050, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0070

Required Family Support Services

Each CDDP must provide or arrange for the following services as required to support a child receiving Family Support services in the family home:

(1) Assistance for families to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(2) Assistance for families to find and arrange the resources to provide planned supports;

(3) Assistance with development and expansion of community resources required to meet the support needs of children and families;

(4) Information, education, and technical assistance for families, and children as appropriate to age, to use to make informed decisions about support needs and to direct support providers;

(5) Fiscal intermediary activities in the receipt and accounting of Family Support funds on behalf of families in addition to making payment with the authorization of families;

(6) Employer-related supports, assisting families to fulfill roles and obligations as employers of support staff when a child's support needs require such arrangements; and

(7) Assistance for families, and children as appropriate to age, to effectively put CFSP's into practice, including help to monitor and improve the quality of personal supports and to assess and revise plan goals.

(8) Services must be provided according to Family Support principles defined in OAR 411-305-0020(21).

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2060, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0080

Family Support Services Child and Family Support Plan

(1) The CDDP must provide or arrange for a child- and family-centered planning process to assist families to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The CDDP, the child, as appropriate to age, and family must develop a written CFSP for each child as a result of this process within the first 90 days of entry in Family Support services and annually thereafter if services are to continue. The CFSP must include, but must not be limited to:

(a) The eligible child's first and last name and the name of the family if different than the child's name or the name of the child's legal representative;

(b) A description of the supports that are required, including the reason the support is necessary;

(c) Beginning and end dates of the Plan Year as well as when specific activities and supports are to begin and end;

(d) Projected Family Support fund costs, if any, with sufficient detail to support estimates;

(e) The types of supports to be purchased with Family Support funds, including the type of provider;

(f) The proposed schedule of plan reviews;

(g) Signatures of the child's Case Manager, the child's parent or other legal representative, and the child, as appropriate to age.

(2) The CFSP or records supporting development of each CFSP must include evidence that:

(a) Family members, the child (as appropriate to age), and others of the family's choosing have participated in the planning process;

(b) Family Support funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The Case Manager has assessed the availability of other means for providing the supports before using Family Support funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible.

(3) Additional requirements for plans involving Department-Designated Funds. Plans and records supporting plan development for children receiving services purchased through Department-Designated Funds must indicate that basic health and safety needs and supports have been addressed, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the child's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support for child and family to recognize and report abuse.

(4) Implementing plans developed by someone other than the child's Case Manager. The CDDP may not use Family Support funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's Case Manager until the child's Case Manager determines that the new plan meets the applicable requirements of OAR 411-305-0080(1) through (3). In such cases, the Case Manager's signature on the plan will indicate acceptance of the plan as the child's CFSP.

(5) Option for abbreviated plan and process for services purchased from the General Assistance Fund. When the CDDP determines a child may receive services that include purchases through the General Assistance Fund, the parent or legal representative of the child may choose to develop the CFSP through an abbreviated planning process consisting of an interview with the child's Case Manager and a statement of assurances that the conditions of OAR 411-305-0080(2) have been met.

(a) The CFSP resulting from this process must be written on forms provided by the Department.

(b) Services purchased through this plan option are limited to one or more of the following services:

(A) Behavior Consultation services as described in OAR 411-305-0120(1)(a) through (b) and provided at Department-approved rates;

(B) Community Inclusion services as described in OAR 411-305-0120(2)(a) through (b);

(C) Environmental Accessibility Adaptations as described in OAR 411-305-0120(3)(a) through (d);

(D) Family Caregiver Supports as described in OAR 411-305-0120(4)(a) through (b);

(E) Family Training as described in OAR 411-305-0120(5)(a) through (b);

(F) In-Home Support as described in OAR 411-305-0120(6)(a) through (b);

(G) Respite Care services as described in OAR 411-305-0120(9)(a) through (b);

(H) Specialized Equipment and Supplies as described in OAR 411-305-0120(11)(a) through (b), except that purchases must be limited to incontinence supplies; or

(I) Transportation Services as described in OAR 411-305-0120(13)(a) through (b) and provided at Department-approved rates.

(6) The Case Manager must obtain and attach a Nursing Care Plan to the written CFSP when Family Support funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(7) Review of plan and resources. The Case Manager must conduct and document reviews of plans and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the CFSP;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Record final Family Support funds costs;

(C) Note effectiveness of purchases based on Case Manager observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of Family Support funds to purchase supports.

(8) Transition to another county of residence. The CDDP must assist Family Support service recipients when the family and eligible child move to a county outside its area of service by:

ADMINISTRATIVE RULES

(a) Continuing Family Support fund payments authorized by the CFSP which is current at the time of the move, if the support is available, through the end date of the CFSP; and

(b) Arranging orientation for the child and family to Family Support services provided by the CDDP of the new county of residence, including discussion of the process for assigning placement on the new CDDP's wait list if Family Support services are not immediately available.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2070, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0090

Managing and Accessing Family Support Funds

(1) The CDDP must allocate 100% of funds contracted by the Department for Family Support, but not for Department-designated funds for specifically-named children, to the General Assistance Fund. This fund must only be used to purchase one or more of the supports described in OAR 411-305-0120 for children according to each child's CFSP.

(a) The CDDP must develop and implement a written plan for managing access to assistance with purchasing supports through the General Assistance Fund which is available for Department review and which includes, but is not limited to:

(A) The number of children anticipated to receive service each year;

(B) The amount of General Assistance Funds funds available per Plan Year for each child; and

(C) How unusual purchases and extraordinary costs are defined and the administrative process for review and approval of such purchases and costs based on cost-effectiveness and the necessity of the support for maintaining the child in the family home.

(b) Purchase of supports through the General Assistance Fund must be offered to children and families in an order of service established according to OAR 411-305-0040(2)(b) as long as funds are available.

(c) The CDDP must review General Assistance Fund purchases and obligations at least every 90 days and must provide opportunities for time-limited, short-term access to Family Support services to children and families waiting for services when additional long-term obligations cannot be supported by the funds available.

(2) Department-Designated Funds. Funds contracted to a CDDP by the Department to serve specifically-named children to avoid out-of-home placement may be used only to support those children. Services must be provided according to each child's Department-approved CFSP. This fund may only be used to purchase supports described in OAR 411-305-0120; however, when Department-Designated funds to support a child exceed \$20,000 per Plan Year, additional restrictions, specified in OAR 411-305-0120 for each service, will also apply. Continuing need for services must be regularly reviewed according to Department procedures.

(3) No child's supports may be purchased using more than one Direct Assistance Fund concurrently.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2080, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0100

Financial Limits of Family Support Services

(1) In any Plan Year, as defined in OAR 411-305-0020(34), Family Support funds used to purchase supports for a child must be limited to the amount of Family Support funds specified in the child's CFSP.

(2) Amounts specified in a child's CFSP for expenditure from the General Assistance Fund may not exceed limits established by the CDDP.

(3) Estimates used to establish the limits of financial assistance in the CFSP must be based on written guidelines for costs of frequently-used services published and updated periodically by the Department whenever available and applicable.

(a) Department guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the CDDP's own documented review.

(b) The CDDP must establish a process for review and approval of all purchases that exceed published guidelines and must monitor the CFSPs involved for continued cost effectiveness.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2090, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0110

Conditions for Family Support Direct Assistance Fund Purchases

(1) Plan required. A CDDP must only use Family Support funds to assist families to purchase supports in accordance with Child and Family

Support Plans that meet requirements for development and content in OAR 411-305-0080.

(2) Assistance is a social benefit. Goods and services purchased with Family Support funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020(439).

(3) The CDDP must arrange for supports purchased with Family Support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect Family Support funds to purchase supports and services from another qualified provider.

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine Family Support funds to purchase such services;

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one child; and

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-305-0020(35) and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child 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) According to Oregon Board of Nursing Administrative Rules Chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to OAR 411-305-0140 governing provider qualifications.

(4) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Family Support funds are used to purchase care, training, supervision or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in OAR 411-305-0020(1);

(b) Responsibility to immediately notify the child's legal representative, or any other person specified by the child'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; and

(c) Limits of payment:

(A) Family Support fund payments for the agreed-upon services will be 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;

(B) The provider must bill all third party resources before using Family Support funds unless another arrangement is agreed upon by the CDDP and described in the CFSP.

(d) The provisions of OAR 411-305-0110(7) regarding sanctions that may be imposed on providers.

(5) Amount, method and schedule of payment. The CDDP may disburse Family Support funds to or on behalf of families up to the amount agreed upon in a CFSP that has been signed by the Case Manager and the child's parent or other legal representative.

(a) The method and schedule of payment must be specified in written agreements between the CDDP and the individual's legal representative; and

(b) In the case of children whose Plan Year costs in Department-Designated Funds exceed \$20,000, the CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. In such cases, the CDDP must pay, or arrange through fiscal intermediary services to pay, qualified providers after approved services described in Child and Family Support Plans have been satisfactorily delivered.

(6) Documentation required. The CDDP must inform families in writing of records and procedures required in OAR 411-305-0160 regarding

ADMINISTRATIVE RULES

expenditure of Family Support funds for direct assistance. During development of the CFSP, the Case Manager must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(7) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with Family Support 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 of Human Services or CDDP 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 411-305-0110(4) and 411-305-0130; or

(K) Been suspended or terminated as a provider by another Department of Human Services office or program.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with Family Support 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 CDDP or the Department of Human Services, as applicable;

(C) The CDDP may withhold payments to the provider.

(c) If the CDDP makes a decision to sanction a provider, the CDDP 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 of Human Services office or program may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2110, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0120

Supports Purchased with Direct Assistance Funds

When conditions of purchase in OAR 411-305-0110 are met, and provided purchases are not prohibited under 411-305-0130, Direct Assistance Funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the child, the needs of the provider or family and the environment; development of a positive behavior support plan; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family or provider, development of visual communication systems as behavior support strategies, and communicating as authorized by the family with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists who:

(A) Have education, skills, and abilities necessary to provide behavior consultation services;

(B) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(C) Submit a resume to the CDDP indicating at least one of the following:

(i) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(ii) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the child at school, assessment in the school setting, or any service identified by the school as required to carry out the child's Individual Education Plan.

(2) Community Inclusion. Community inclusion services assist a child to acquire, retain or improve skills that enhance independence and integration. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for a child to participate in activities to facilitate independence and promote community inclusion in settings chosen by the child and the child's parent(s) or other legal representative(s).

(a) Community inclusion services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: personal assistance with eating, toileting, mobility during recreational activities; the cost of individualized support provided to the child in specialized camps (but not general, administrative or room and board fees); the cost of daily support in after-school activities when a child of the same age (twelve and over) without disabilities would not require such support.

(b) Community inclusion services available to children other than those children specified in OAR 411-305-0120(2)(a) include, but are not limited to, the services indicated in 411-305-0120(2)(a) as well as fees and supplies required for the child and provider to participate in individualized services; peer coaching or mentoring to participate in community activities; specialized camps, and adaptive recreational programs.

(c) Community Inclusion services do not: replace normal parental roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills; replace normal parental responsibility for child care while the parents work or go to school; or include education and other instruction and support available according to the Individuals with Disabilities Education Act. Examples of activities that are not provided as Community Inclusion services include, but are not limited to: substitute care for child under 12 years of age while parents work or go to school; education services; tuition to private schools; payment of programs or services in lieu of school; legal fees such as those for setting up trusts, guardianships, providing representation at hearings regarding educational services; incentive payments to employers to hire youth with disabilities.

(3) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to a child's home or family vehicle which are necessary to ensure the health, welfare, and safety of the child in the home, or which enable the child to function with greater independence around the home and in family activities.

(a) Environmental Accessibility Adaptations available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars; installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for children whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the child.

(b) Environmental Accessibility Adaptations available to children other than those children specified in OAR 411-305-0120(3)(a) include adaptations listed in 411-305-0120(3)(a) as well as modifications to a vehicle to meet the unique needs of the child (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique

ADMINISTRATIVE RULES

modifications to keep the individual safe in the vehicle). Adaptations may also include modifications to a second site, such as the home of a non-custodial parent or a neighbor providing frequent respite services, when those modifications are required for the child to be supported in the family home and are not a provider's responsibility as a reasonable accommodation under the Americans with Disabilities Act.

(c) Examples of what environmental accessibility supports do not provide include, but are not limited to: adaptations or improvements to the home which are not cost effective, are of general utility to the household, or are not of direct medical or remedial benefit to the child, such as carpeting, roof repair, central air conditioning; adaptations that add to the total livable, heated square footage of the home; generic fire safety equipment; general household maintenance and repair.

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(e) Environmental accessibility adaptation providers must be building contractors licensed under OAR Chapter 812, Construction Contractor's Board, and Chapter 808, Landscape Contractors.

(4) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family Caregiver Supports available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to:

(A) Child and family-centered planning facilitation and follow-up;

(B) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family; and

(C) Assistance with development of tools such as job descriptions, contracts, and employment agreements.

(b) Family Caregiver Supports available to children other than those children specified in OAR 411-303-0120(4)(a) include services listed in 411-305-0120(4)(a) as well as:

(A) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising and translation services;

(B) Cost of additional homeowner's insurance, but not Workers Compensation Insurance, required to cover domestic employees providing in-home care and supervision; and

(C) Workplace materials and supplies that may be required for paid caregivers in the family home.

(5) Family Training. Family training services are training, coaching, and support provided to the family of a child with developmental disabilities to increase capabilities to care for, support and maintain the child in the home.

(a) Family Training services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include, but are not limited to: instruction about treatment regimens and use of equipment specified in the CFSP; or information, education and training about the child's disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under 677.100; social workers licensed under 675.530; counselors licensed under 675.715; organized conferences and workshops, prior-authorized by the CDDP, that are specifically related to the child's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family Training services available to children other than those children specified in OAR 411-305-0120(5)(a) include services listed in 411-305-0120(5)(a) as well as materials such as computer programs, books, and audio/video media; organized conferences and workshops, prior-authorized by the CDDP, offering training and information about disabilities and disability resources in general; parent-to-parent information-sharing and mentoring; and support for the family to relieve the stress associated with caring for child with disabilities.

(c) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; more than \$500 per family in registration fees, lodging, and travel costs for any single training event; training for paid caregivers; legal consultation fees; training for families to carry out educational activities in lieu of school; or vocational training for family members.

(6) In-home Support. In-home support services are care, training, and supervision provided based on the needs of the child that must be met for the child to live in the family home. These services support the child to live as independently as appropriate for the child's age.

(a) In-Home Support services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to

those covered by Medicaid. Examples include, but are not limited to providers who come into the family home and assist the child with: activities of daily living; medical and physical health care — including delegation of nursing tasks; behavior management; maintenance of skills and behaviors required for the child to live in the community; and training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning to the extent that a child without disabilities would normally be acquiring such skills.

(b) In-Home Support services available to children other than those children specified in OAR 411-305-0120(6)(a) include services listed in 411-305-0120(6)(a) as well as: maintenance of expressive and receptive skills in verbal and non-verbal language to the extent required to function in the home; functional application of acquired reading and writing skills; assistance with extraordinary household costs incurred only because of a child's disability such as space for paid overnight caregivers to sleep, or payment of water or sewage bill above normal use due to child's use of water to self-calm.

(c) Examples of what In-Home Support services do not provide include, but are not limited to: support generally provided at the child's age by parents or other family members; educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act; services provided by the parent, stepparent, foster parent, or other legal representative of the child; behavior management supports that are not based on positive behavioral theory and practice; health insurance; legal consultation fees for establishing domestic employment arrangements; clothing; mortgage or rent payments; home schooling; telephone, television, or internet services.

(d) In-Home Support services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 may not be provided on a 24-hour shift-staffing basis. The child's parent(s) or other legal representative(s) may be expected to provide at least eight (8) hours of care and supervision for the child each day with the exception of respite; In-Home Support services may only be provided when the child is home and available for service during the remainder of the 24-hour period.

(7) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family and provider training, consultation, feeding adaptations, and direct therapy provided by an appropriately licensed or certified occupational therapist.

(b) Occupational therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(8) Physical Therapy. Physical therapy services are services provided by a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Physical therapy services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(9) Respite Care. Respite care services are short-term care and supervision provided on an intermittent basis because of the absence, or need for relief of, persons normally providing the care to a child with developmental disabilities.

(a) Respite care services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples include temporary or overnight respite services provided in a variety of settings, including, but not limited to: the home of the child; a licensed group home or foster home; a licensed day care center; or a community care facility or respite program that is not a private residence.

(b) Respite care services available to children other than those children specified in OAR 411-305-0120(9)(a) include services listed in 411-305-0120(9)(a) as well as services provided in the home of the respite provider and services provided in a specialized camp.

(c) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the child's parents to attend school or work; vacation travel and lodg-

ADMINISTRATIVE RULES

ing expenses; or cost of the child's meals unless part of a short-term stay in a licensed group home or foster home.

(10) Special Diets. This service is not available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000. For other children receiving Family Support Services, special diets are specially prepared food supplements or particular types of food supplements needed to sustain the child in the family home, ordered by a physician, and monitored at least every six months by a dietitian licensed according to ORS 691.415 through 691.465. These supplements may include, but are not limited to, high caloric supplements, gluten-free supplements, or metabolic supplements. Special diet services are not intended to meet an individual's complete daily nutritional requirements and do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability. Special diets do not include experimental nutritional supplements or regimens, such as combinations of vitamins and minerals purported to cure or alleviate symptoms of autism, Downs' Syndrome, or other developmental disabilities and which have not achieved general professional acceptance as essential to management of these conditions.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, aids, controls, supplies, or appliances specified in the CFSP that enable children to increase their abilities to participate in or perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment.

(a) Specialized Equipment and Supplies available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; or adaptive communication devices and supplies; customized equipment such as plates, bowls, utensils, glasses, trays that allow a child to eat independently or with minimum assistance.

(b) Specialized Equipment and Supplies services available to children other than those children specified in OAR 411-305-0120(11)(a) include services listed in 411-305-0120(11)(a) as well as: equipment, furnishings, or supplies which are not commercially manufactured specifically to serve a medical or remedial function, but which have or may be easily modified to have important characteristics that safely and cost-effectively provide necessary supports; extra-heavy bed to help prevent injuries and property destruction; water table, swing, other sensory devices or equipment used by child with autism to self-calm; extra cost of shoes or other clothing due to required modifications or frequency of replacement caused by extraordinary wear; used equipment that has been certified by an appropriate professional as safe for mobility or positioning; or adaptive switches.

(c) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: equipment or supplies which are not of direct medical or remedial benefit to the child; equipment or supplies that may be purchased through other means such as the Medicaid State plan or other public or private means available to the child; standard items of clothing in amounts normally required by children of the same age; cost equivalent of toys and activities typically purchased by parents of children of the same age; equipment and furnishings of general household use; items required solely to allow a child to participate in school; fees for maintaining telephone services; trampolines other than small "jogger" type; or beds which restrict a child's freedom of movement when the bed is used to control behavior and when the child has passed the age when cribs and similar arrangements are normally used to protect a child from falling out of bed.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan. These services are available to maintain a child's skills after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified physical therapist.

(b) Speech, hearing, and language services do not include experimental treatments and therapies or services identified by the school as required to carry out the child's Individual Education Plan.

(13) Transportation Services. Transportation services allow children to gain access to community services, activities, and resources.

(a) Transportation services available to children whose Plan Year costs in Department-Designated Funds exceed \$20,000 are restricted to those covered by Medicaid. These services are provided to meet non-medical transportation needs that are beyond the scope of normal parental responsibility for transporting a child for leisure, recreation, and other non-medical community pursuits. Examples of such transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; assistance with purchase of a pass for public transportation required to accommodate wheelchair or other equipment and supervision needs; and reimbursement of operational expenses of agency/staff vehicles used for transporting children, not to exceed established rates.

(b) Transportation services available to children other than those children specified in OAR 411-305-0120(13)(a) include services listed in 411-305-0120(13)(a) as well as payment per mile for extraordinary mileage required to transport a child to urban medical centers from distant rural communities.

(c) Transportation services do not include: transportation normally provided by schools and by parents for children of similar age without disabilities; purchase of any family vehicle; vehicle maintenance and repair; reimbursement for out-of-state travel expenses; ambulance services; or transportation services that may be obtained through other means such as the State Medicaid Plan or other public or private resources available to the child.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thur 12-27-03; Renumbered from 309-041-2120, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0130

Using Family Support Funds for Certain Purchases is Prohibited

Family Support funds must not be used for:

- (1) Services, materials, or activities that are illegal;
- (2) Services or activities that are carried out in a manner that constitutes abuse of a child as defined in OAR 411-305-0020(1);
- (3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;
- (4) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;
- (5) Materials or equipment that have been determined unsafe for the general public by recognized child and consumer safety agencies;
- (6) Family vehicles;
- (7) Health and medical costs that the general public normally must pay, including, but not limited to: medications; health insurance co-payments; mental health treatments; dental treatments and appliances; medical treatments; dietary supplements; or treatment supplies not related to nutrition, incontinence, or infection control;
- (8) Ambulance services;
- (9) Legal fees, including, but not limited to, the costs of representation in educational negotiations, establishment of trusts, creation of guardianship, etc.;
- (10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the child's disability-created need for personal assistance in all home and community settings;
- (11) Care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;
- (12) Employee wages or contractor payments for services when the child is not present or available to receive services, e.g. employee paid time off, hourly "no show" charge, contractor preparation hours, etc.;
- (13) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of supports as defined in OAR 411-305-0020(40), or do not meet the definition of social benefits in 411-305-0020(39);
- (14) Educational services, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;
- (15) Services, activities, materials, or equipment that the CDDP determines can be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;
- (16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or
- (17) Purchase of services when there is sufficient evidence to believe that the child's parent or legal representative, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the CFSP, refused to cooperate with record keeping required to document use of Family Support funds, or oth-

ADMINISTRATIVE RULES

erwise knowingly misused public funds associated with Family Support services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2130, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0140

Standards for Providers Paid with Direct Assistance Funds

Independent providers, provider organizations, and general business providers paid with Family Support Direct Assistance Funds must be qualified as follows:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or other legal representative to provide the services listed in OAR 411-305-0120 must:

- (a) Be at least 18 years of age;
- (b) Have approval to work based on current Department of Human Services policy and procedures for review of criminal history;
- (c) Be legally eligible to work in the United States;
- (d) Not be a parent, stepparent, foster parent or other person legally responsible for the child receiving supports;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the CFSP, with such demonstration confirmed in writing by the child's parent or other legal representative and including:

- (A) Ability and sufficient education to follow oral and written instructions and keep any records required;
- (B) Responsibility, maturity, and reputable character exercising sound judgment;
- (C) Ability to communicate with the individual;
- (D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation services, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(j) Nursing consultants must in addition have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(2) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with Family Support funds must meet standards for qualification of independent providers outlined in OAR 411-305-0140(1).

(3) Services provided by general business providers must hold any current license appropriate to function required by the State of Oregon or federal law or regulation and services purchased with Family Support funds must be limited to those within the scope of the general business provider's license. Such licenses include, but are not limited to:

- (a) A license under ORS 443.015 for a home health agency;
- (b) A license under ORS 443.315 for an in-home care agency;
- (c) Current license and bond as a building contractor under OAR Chapter 812, Construction Contractor's Board, and chapter 812, Landscape Contractors, for a provider of environmental accessibility adaptations involving home renovation or new construction;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2140, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0150

Family Support Services Administration and Operation

(1) Family leadership. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to Family Support services such as evaluating the effectiveness of Family Support services, evaluating family satisfaction with Family Support services, improving availability of resources to meet children's support needs, and developing the plan for management of the General Assistance Fund required by OAR 411-305-0090(1)(a). When the CDDP elects to appoint such a group, the CDDP must develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process will be used to resolve concerns or disagreements between the CDDP and its Family Support Policy Oversight Group about the provision of Family Support services.

(2) Case Manager training. The CDDP must provide or arrange for Case Managers to receive Department-approved training needed to provide Family Support services, including, but not limited to, child and family-centered planning processes, employer-related supports, and individualized budgeting for supports.

(3) Fiscal intermediary requirements. Providers of fiscal intermediary services purchased by the CDDP with Family Support Direct Assistance Funds according to Child and Family Support Plans 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;
- (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 CDDP to effectively manage Family Support services and by families to effectively manage supports;
- (f) Maintain flexibility to adapt to changing circumstances of children and families; and
- (g) Provide training and technical assistance to families as required and specified in Child and Family Support Plans.

(4) General record requirements. The CDDP must maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules will be considered "providers" as defined in ORS 179.505(1), and ORS 179.505 will be applicable. Access to records by the Department does not require authorization by the family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Individual records. Records for children who receive Family Support services must be kept up-to-date and must include:

- (A) Assigned placement in order of service, with information used to determine placement;
- (B) An easily — accessed summary of basic information, including child's name, parents' names, legal representative if other than parents, conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, and child's financial benefit information.

(C) Records related to receipt and disbursement of Family Support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140 and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

- (D) Incident reports involving CDDP staff;
- (E) Assessments used to determine supports required, preferences, and resources;

- (F) Child and Family Support Plan and reviews;
- (G) Case Manager correspondence and notes related to plan development and outcomes; and
- (H) Family satisfaction information.

(c) General financial policies and practices. The CDDP must:
(A) Maintain up-to-date accounting records accurately reflecting all Family Support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

ADMINISTRATIVE RULES

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department of Human Services administrative rule pertaining to fraud and embezzlement.

(d) Records retention. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited. Individual records must be kept for a minimum of seven years.

(5) Complaints, Grievances, Appeals. The CDDP must:

(a) Provide for review of complaints, grievances, and appeals by or on behalf of children related to Family Support services as set forth in rules for Community Developmental Disability Programs (OAR 411-320-0170(2)(c)).

(b) Each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid:

(A) The CDDP must notify the child and the child's parent(s) or other legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice, or personally serve it to the child's parent(s) or other legal representative(s) ten (10) days or more prior to the effective date of an action.

(i) The CDDP must use the Oregon Medical Assistance Program (OMAP) form 3030, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(ii) This notification requirement will not apply if an action is part of, or fully consistent with, the CFSP and the child's parent(s) or other legal representative(s), have agreed with the action by signature to the plan.

(B) The child's parent(s) or other legal representative(s) may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (2)(c) of this rule.

(C) A notice required by paragraph (5)(a) or (5)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(i) What action the CDDP intends to take;

(ii) The reasons for the intended action;

(iii) The specific regulations that support, or the change in Federal or State law that requires, the action;

(iv) The appealing party's right to a contested case hearing in accordance with OAR Chapter 137, Oregon Attorney General's Model Rules, and 42 CFR Part 431, Subpart E;

(v) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(vi) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(vii) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(viii) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(D) If the child's parent(s) or other legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(E) The child's parent(s) or other legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(F) If the child's parent(s) or other legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event must services be continued in excess of ninety days from the date of the child's parents' or other legal representatives' request for an administrative hearing:

(i) The current authorization expires;

(ii) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

(iii) The child is no longer eligible for Medicaid benefits.

(iv) The Department must notify the child's parent(s) or other legal representative(s) that it is continuing the service. The notice must inform the child's parent(s) or other legal representative(s) that, if the hearing is

resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(G) The Department must reinstate services if:

(i) The Department takes an action without providing the required notice and the child's parent(s) or other legal representative(s) requests a hearing;

(ii) The Department does not provide the notice in the time required in this rule and the child's parent(s) or other legal representative(s) requests a hearing within ten days of the mailing of the notice of action; or

(iii) The post office returns mail directed to the child's parent(s) or other legal representative(s), but the location of the child's parent(s) or other legal representative(s) becomes known during the time that the child is still eligible for services.

(iv) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(H) The Department representative and the child's parent(s) or other legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(i) Provide an opportunity for the Department and the child's parent(s) or other legal representative(s) to settle the matter;

(ii) Ensure the child's parent(s) or other legal representative(s) understands the reason for the action that is the subject of the hearing request;

(iii) Give the child's parent(s) or other legal representative(s) an opportunity to review the information that is the basis for that action;

(iv) Inform the child's parent(s) or other legal representative(s) of the rules that serve as the basis for the contested action;

(v) Give the child's parent(s) or other legal representative(s) and the Department the chance to correct any misunderstanding of the facts;

(vi) Determine if the child's parent(s) or other legal representative(s) wishes to have any witness subpoenas issued; and

(vii) Give the Department an opportunity to review its action or the action of the CDDP.

(I) The child's parent(s) or other legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(J) The Department may provide to the child's parent(s) or other legal representative(s) the relief sought at any time before the final order is served.

(K) Withdrawals. A child's parent(s) or other legal representative(s) may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department must send a final order confirming the withdrawal to the last known address of the child's parent(s) or other legal representative(s). The child's parent(s) or other legal representative(s) may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(L) Proposed and final orders.

(i) In a contested case, the hearings officer must serve a proposed order on the child, the child's parent(s) or other legal representative(s) and the Department.

(ii) If the hearings officer issues a proposed order that is adverse to the child, the child's parent(s) or other legal representative(s) may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The child's parent(s) or other legal representative(s) may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(6) Other operating policies and practices. The CDDP 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.

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

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 - 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2150, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

ADMINISTRATIVE RULES

411-305-0160

Special Record Requirements for Direct Assistance Fund Purchases

The CDDP must develop and implement written policies and procedures concerning use of Family Support funds to purchase goods and services required for support of children and described in Child and Family Support Plans. These policies and procedures must include, but are not limited to:

- (1) Minimum acceptable records of expenditures:
 - (a) Itemized invoices and receipts to record purchase of any single item;

- (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;

- (d) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, physical therapy, occupational therapy, speech and language, nursing, and other professional training and consultation services; and

- (e) Pay records, including timesheets signed by both employee and employer, to record employee services.

- (2) Procedures for confirming the receipt, and securing the use of, specialized equipment and environmental accessibility adaptations:

- (a) The CDDP must record the purpose, final cost, and date of receipt of any specialized equipment purchased for a child;

- (b) The CDDP must secure use of equipment or furnishings costing more than \$500 through a written agreement between the CDDP and the child's family or other legal representative which specifies the time period the item is to be available to the child and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

- (c) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing \$5000 or more per single instance or cumulatively over several modifications are approved by the Department before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by the Department for protection of Department's interest through liens or other legally available means. Further, the CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

- (3) Return of advanced funds and purchased goods.

- (a) Any funds advanced to a family that are not spent according to the child's CFSP, as indicated by acceptable records, must be returned to the local CDDP when the current CFSP expires or immediately if requested at any time by the CDDP.

- (b) Any goods purchased with Family Support funds that are not used according to the child's CFSP or according to an agreement securing the State's use may be immediately recovered.

- (4) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or 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.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2160, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0170

Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation and regulation activities as directed by the Department.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2170, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0180

Variations

- (1) Criteria for a variance. Variations may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR chapter 411, division 305, Family Support Services for Children with Developmental Disabilities, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-305-0120 and 411-305-0130 are specifically excluded from variance.

- (2) Variance application. The CDDP requesting a variance must submit a written application to the Department that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and

- (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

- (e) If the variance applies to a child's service, evidence that the variance is consistent with the child's current CFSP.

- (3) Department review. The Department Administrator or designee may approve or deny the request for a variance.

- (4) Notification. The Department must notify the CDDP of the decision. This notice must be sent within 30 calendar days of the receipt of the request at the Department with a copy to all relevant Department programs or offices.

- (5) Appeal. Appeal of the denial of a variance request must be made in writing to the Department Administrator or designee, whose decision is final.

- (6) Duration of variance. The Department will determine the duration of the variance.

- (7) Written approval. The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 430.610-430.670, 427.005 – 427.007, 417.340-417.350

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2180, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

Adm. Order No.: SPD 21-2003

Filed with Sec. of State: 12-22-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Adopted: 411-330-0010, 411-330-0020, 411-330-0030, 411-330-0040, 411-330-0050, 411-330-0060, 411-330-0070, 411-330-0080, 411-330-0090, 411-330-0100, 411-330-0110, 411-330-0120, 411-330-0130, 411-330-0140, 411-330-0150, 411-330-0160, 411-330-0170

Subject: These rulemaking actions implement permanent adoption of Comprehensive In-Home Support for Adults with Developmental Disabilities rules following expiration on December 27, 2003 of temporary amendments to Self-Directed Support for Individuals with Developmental Disabilities rules. These amendments are taken to: a) update definitions; b) clarify eligibility; c) reflect service descriptions acceptable under the Community Based Waiver #0117.90.R2; and d) define and clarify roles and responsibilities of families, individuals' legal representatives, local Developmental Disabilities programs and the Department of Human Services.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-330-0010

Statement of Purpose and Statutory Authority

- (1) Purpose. These rules prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs providing comprehensive services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

- (2) Statutory authority. These rules are authorized by ORS 410.070 and 409.050 and carry out the provisions of 430.610 through 430.670, 427.005 through 427.007. These rules also carry out the provisions of ORS 417.340 through 417.348 for families of adults with developmental disabilities.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0020

Definitions

- (1) "Abuse" means

- (a) Abuse of an Adult. Except for those additional circumstances listed in OAR 411-330-0020(1)(b)(A-F) abuse of an adult 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 caused 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; or

- (D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

ADMINISTRATIVE RULES

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(b) Abuse in contracted or purchased services. When the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes is but not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate, unauthorized restraint resulting in injury.

(i) A restraint is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without ISP team approval, identified on the ISP and is described in formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to: an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or his/her legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program and/or another individual's funds, or the program becoming guardian or conservator.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator of Seniors and People with Disabilities or that person's designee.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services especially when rights are at risk or have been violated.

(6) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and services.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(8) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for

persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(11) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department: a 24-hour program, a foster home, a supported living program or in-home supports costing more than \$20,000 a year provided to an individual in his/her family home in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(12) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(13) "Developmental Disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(14) "Employer-related supports" means activities that assist individuals and, when applicable, their legal representatives or family members, with directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(15) "Entry" means admission to a Department-funded developmental disability service provider.

(16) "Exit" means termination from a Department-funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(17) "Family," for determining individual eligibility for In-Home Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(18) "Fiscal Intermediary" means a person or agency that receives and distributes In-Home support funds on behalf of an individual according to an In-Home Support plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or their legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(19) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with In-Home Support Services funds that:

ADMINISTRATIVE RULES

(a) Is primarily in business to provide the service to the general public and is chosen by the individual; and

(b) Provides services for the individual through employees, contractors or volunteers.

(20) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a CDDP.

(21) "Immediate family," for the purposes of determining whether IHS funds may be used to pay a family member to provide services, means the spouse of an adult.

(22) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(23) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(24) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with In-Home Support Service funds who personally provides services to the individual.

(25) "Individual" means an adult with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(26) "In-Home Support" or "IHS" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support plan.

(27) "In-Home Support Plan" or "IHS Plan" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The IHS Plan is developed by the CDDP and individual, the individual's legal representative, (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The IHS Plan is the individual's Plan of Care for Medicaid purposes.

(28) "Integration" is defined in ORS 427.005 and means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(29) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person, or agency who is authorized by the court to make decisions about services for the individual.

(30) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(31) "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 an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. 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 40.295.

(32) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(33) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(34) "Oregon Intervention System" or "OIS" means an approach, which emphasizes a philosophy of individualized, non-aversive behavior support while constantly emphasizing dignity and respect for each individual.

(35) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle at home and in the community using individual strengths, relationships, and resources. Person centered planning is designed to build on and strengthen naturally occurring opportunities and relationships. A CDDP representative will gather information consistent with individual needs and preferences through conducting interviews with the individual; observation of the individual in various settings; and/or communication through a simple interview or formal group network process with persons selected by, or clearly significant to, the individual.

(36) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data. 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.

(37) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement, or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(38) "Provider" means a person, organization or business who is selected by an individual or the individual's legal representative and paid with In-Home Support funds to provide support according to the individual's In-Home Support Plan.

(39) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with In-Home Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(40) "Services coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with services coordinator.

(41) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current In-Home Support plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to individuals with or without disabilities; or

(c) Replace other governmental or community services available to an individual or family; or

(d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(42) "Support" means assistance individuals require--solely because of the effects of disability--to maintain or increase independence, achieve community presence and participation, and improve productivity. It includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(43) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

ADMINISTRATIVE RULES

(44) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the CDDP.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0030

Eligibility for In-Home Support Services

(1) Non-discrimination. Individuals determined eligible according to OAR 411-330-0020(13) must not be denied In-Home Support services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for the CDDP's In-Home Support services when the individual has been determined eligible for developmental disability services by the CDDP and the individual is an adult living at home or in the family home whose In-Home Support services, or whose combined In-Home Support services and services regulated by OAR 411-345-0010 through 411-345-0310 Employment and Alternative to Employment Services, cost more than \$20,000 a year and when part or all of the funds for these services have been designated by contract with the CDDP to support the individual because:

(a) The Department has determined the individual to be at imminent risk of civil commitment under ORS 427 and is providing diversion services according to the provisions of OAR 309-041-0300 through 309-041-0335, Standards for Diversion Services; or

(b) Funds previously used to purchase the individual's Department-regulated residential, work, or day habilitation services have been made available within the guidelines published by the Department to purchase In-Home services that cost more than \$20,000 a year; or

(c) The Department has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement *Staley v. Kitzhaber* (USDC CV00-0078-ST) and has made funds available to purchase In-Home services that cost more than \$20,000 a year.

(3) Concurrent eligibility. Individuals must not be found eligible for In-Home Support service by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0040

Service Entry and Exit

(1) Providing basic information to individuals and legal representatives. The CDDP must make accurate, up-to-date written information about In-Home Support services available to eligible individuals and their legal representatives. These materials must include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using In-Home Support services, including person-centered planning, evaluation, and how to raise and resolve concerns about IHS services;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of individual and legal representative responsibility for use of public funds;

(e) An explanation of individual rights to select and direct providers of services authorized through the individual's IHS Plan and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, or 411-330-0090; and

(f) The CDDP must make information required in OAR 411-330-0040(1)(a) through (e) available using language, format, and presentation methods appropriate for effective communication according to individual needs and abilities.

(2) Entry into In-Home Support services. An individual will enter In-Home Support services at any time that funds are made available through a Department contract with the CDDP specifically to support the individual.

(3) Duration of In-Home Support services. An eligible individual who has entered a CDDP's In-Home Support service may continue to receive IHS services as long as the Department continues to provide funds specifically for that individual through contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(4) An individual must exit In-Home Support services:

(a) At the end of a service period agreed upon by all parties and specified in the In-Home Support Plan;

(b) At the written request of the individual or the individual's legal representative to end the service relationship;

(c) When the individual moves from the CDDP's service area, unless as part of a time-limited plan for transition to a new county of residence;

(d) When funds to support the individual are no longer provided through the Department contract to the CDDP of the individual's county of residence;

(e) When the CDDP has sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the In-Home Support Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(f) No less than thirty (30) days after the CDDP has served written notice of intent to terminate services, when the individual or the individual's legal representative either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0050

Required In-Home Support Services

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) Person-centered planning approach required. A CDDP must use a person-centered planning approach to assist individuals and their legal representatives to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address basic health and safety needs and supports, including informed decisions by the individual or the individual's legal representative regarding any identified risks.

(3) Written plan required. The individual's Services Coordinator must write an initial In-Home Support Plan that is signed by the individual (or the individual's legal representative) and dated within 30 days of entry into IHS services. The plan or attached documents must include:

(a) Individual name and, if applicable, legal representative name;

(b) The purpose of plan activities, addressing one or more of the following:

(A) Independence, i.e. the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration, i.e. the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity, i.e. the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of the family to continue to care for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, with a brief statement of the nature of the disability that makes the support necessary;

(d) Projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the plan;

(e) Projected costs, with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(g) Final In-Home Support fund costs; and

(h) Schedule of plan reviews.

(4) Nursing Care Plan. A Nursing Care Plan must be included in the In-Home Support planning when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) Review of plan and resources. The individual's Services Coordinator must conduct and document reviews of plans and resources with individuals and their legal representatives as follows:

(a) At least quarterly review and reconciliation of receipts and records related to purchases of supports with IHS funds;

ADMINISTRATIVE RULES

(b) At least annually and as major activities or purchases are completed to:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Note effectiveness of purchases based on Services Coordinator observation as well as individual or legal representative satisfaction; and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(6) Transition to Another County. For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer funds designated for the individual to continue the plan for supports.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0060

In-Home Support Fund Assistance with Purchasing Supports

(1) Plan required. A CDDP will only use In-Home Support funds to assist individuals and their legal representatives to purchase supports when the individual's Services Coordinator has developed a written and approved IHS Plan which meets requirements for development and content in OAR 411-330-0050 and:

(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) Identifies the resources needed to purchase the remainder of necessary supports; and

(d) Is the most cost-effective plan that can safely meet the goals of the plan.

(2) Assistance is a social benefit. Goods, and services purchased with In-Home Support funds must be provided only as social benefits as defined in OAR 411-330-0020(41).

(3) Amount, method and schedule of payment. IHS funds may be disbursed on behalf of individuals. The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and individual's legal representative, if any. The CDDP is specifically prohibited from reimbursement of individuals, individuals' legal representatives or families for expenses related to services and from advancing funds to individuals, individuals' legal representatives or families to obtain services.

(4) Supports purchased. Supports purchased for an individual with In-Home Support funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that allow the individual or the individual's legal representative to freely redirect resources to purchase supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020(36);

(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; and

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) Provider responsibilities and agreements. When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the individual's legal representative and family (if services are provided to an individual in the family home) and the CDDP of injury, illness, accidents, or any unusual circumstances which may have a serious effect on the health, safety, physical, emotional well being or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS fund payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's legal representative, or the individual's family, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the IHS Plan.

(6) Use of IHS funds prohibited. IHS funds must not pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse of an adult as defined in OAR 411-330-0020(1);

(c) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(e) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(f) Individual or family vehicles;

(g) Health and medical costs that the general public normally must pay, including but not limited to: medications; health insurance co-payments; mental health evaluation and treatment; dental treatments and appliances; medical treatments; dietary supplements; treatment supplies not related to nutrition, incontinence, or infection control;

(h) Basic or specialized food or nutrition essential to sustain the individual including but not limited to, high caloric supplements, gluten-free supplements; diabetic, ketogenic or other metabolic supplements.

(i) Ambulance services;

(j) Legal fees, including but not limited to costs of representation in educational negotiations, establishing trusts, and creating guardianships;

(k) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(l) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Rate enhancements to an individual's existing Employment and Alternative to Employment Services for Individuals with Developmental Disabilities under OAR 411-345-0010 through 411-345-0310;

(n) Employee wages or contractor payments for services when the individual is not present or available to receive services, e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(o) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of In-Home Supports as defined in OAR 411-330-0020(26), the definition of supports as defined in 411-330-0020(42), and the definition of social benefits as defined in 411-330-0020(41);

(p) Educational services for school-age adults, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

(q) Services, activities, materials, or equipment that can be obtained by the individual or the individual's legal representative through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(r) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(s) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal representative, family, or service provider have engaged in fraud or misrepresentation, failed to use resources as agreed upon in the In-Home Support plan, refused to cooperate with record keeping required to document use of In-Home Support funds, or otherwise knowingly misused public funds associated with In-Home Support services.

(7) Documentation required. The CDDP must inform individuals and individuals' legal representatives in writing of records and procedures required in OAR 411-330-0140(3)(c) regarding expenditure of In-Home Support funds for direct assistance. During development of the IHS Plan, the individual's Services Coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the IHS Plan and any other written service agreements.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0070

Standards for Independent Providers Paid with In-Home Support Services Funds

(1) General independent provider qualifications. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Oregon Department of Human Services policy and procedures for review of criminal history;

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual receiving services;

ADMINISTRATIVE RULES

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the In-Home Support Plan, with such demonstration confirmed in writing by the employing individual, individual's legal representative, family or designated advocate including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers;

(i) In the case of an agency, holds any license or certificate required by the State of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(j) If providing transportation, has a valid driver's license and proof of insurance, as well as other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Systems (OIS), behavior intervention system, and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) Social/sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social/sexual consultation services; and Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social/sexual consultant.

(4) Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(5) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that will make the home safe and accessible for the individual.

(6) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(7) Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0080

Standards for Provider Organizations Paid with In-Home Support Services Funds

(1) Provider Organizations with current license or certification. A provider organization licensed under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR 309-040-0000 through 309-040-0100 for Adult Foster Homes or certified under OAR chapter 411, division 305, Employment and Alternative to Employment Services for Individuals with Developmental Disabilities, OAR 309-041-0550 through 309-041-0830, Supported Living Services or OAR chapter 411, division 340, Support Services for Adults with Developmental Disabilities will not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, emergent services, or support services.

(a) Current license or certification will be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise and train qualified staff;

(B) Provide services according to individual support plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) All individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds must meet standards for qualification of independent providers outlined in OAR 411-330-0070.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0090

Standards for General Business Providers

(1) General Business Providers providing services to individuals and paid with in-home support services funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by OAR chapter 812, Construction Contractor's Board and OAR chapter 808, Landscape Contractors for a provider of environmental accessibility adaptations;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon; and

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(2) Services provided and paid for with in-home support services funds must be limited to those within the scope of the general business provider's license.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0100

Sanctions for Independent Providers, Provider Organizations, and General Business Providers

(1) Circumstances under which sanctions may be imposed. Sanction(s) may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with In-Home Support 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 the Department or CDDP investigation and/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 411-330-0060(6) and 411-330-0070; or

ADMINISTRATIVE RULES

(k) Been suspended or terminated as a provider by another office or program within the Department.

(2) Types of sanctions that may be imposed. The following sanctions may be imposed on a provider:

(a) The provider may no longer be paid with In-Home Support funds;

(b) The provider may not be allowed to provide services for a specified length of time and/or until specified conditions for reinstatement are met and approved by the CDDP or Department, as applicable;

(c) The CDDP may withhold payments to the provider.

(3) CDDP decision to sanction. If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 calendar days of the notice. The provider must appeal separately from any appeal of audit findings and overpayments.

(4) Appeal rights of a provider of Medicaid services. A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator or designee.

(5) Written notice of appeal required. For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 calendar days of the date the sanction notice was mailed to the provider.

(6) Discretion of the Department. At the discretion of the Department, providers who have previously been terminated or suspended by the Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0110

Supports Purchased with In-Home Funds

When conditions of purchase in OAR 411-330-0060 are met, In-Home Support funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the individual, the needs of the family and the environment; development of positive behavior support strategies including a behavior support plan if needed; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family, development of visual communication systems as behavior support strategies, and communicating as authorized by the individual or their legal representative with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(a) Providers may include, but are not limited to, licensed psychologists, behavioral specialists, autism specialists, or other communication specialists who meet the requirements in OAR 411-330-0070(1)(a) through (j) and (2)(a) through (c).

(b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the individual at school, assessment in the school setting, or any service identified by the school as required to carry out the person's Individual Education Plan.

(2) Community inclusion services. Community inclusion services assist an individual to acquire, retain or improve physical or mental skills, which enhance integration, independence and/or productivity and take place separate from the home in which the individual lives and occur on a regularly scheduled basis. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for an individual to participate in activities to facilitate independence and promote community inclusion in settings chosen by the individual and the individual's legal representative.

(a) Community inclusion services include, but are not limited to: assistance in use of community resources (e.g. shopping, transportation systems; personal assistance to attend local interest clubs, gym or sports events; assistance to build relationships with non-disabled individuals in community settings capable of providing natural support; opportunities for activities and socialization with other people with disabilities; and/or assistance with eating, toileting, mobility during recreational activities); and the cost of daily care and supervision.

(b) Examples of what community inclusion services do not provide include, but are not limited to: fees for attending local clubs, gyms or sporting events; secondary and post-secondary education services; tuition to private schools; services provided by a spouse of the individual; illegal activities; legal fees; vacation costs that would normally be incurred by anyone on vacation regardless of disability; supports that have not been arranged according to applicable state and federal wage and hour regulations; serv-

ices that are not necessary or cost-effective; and services or activities carried out in a manner that constitutes abuse of an adult.

(3) Supported employment services. Supported employment services assist an individual to choose, get and keep a paid job in an integrated community business setting.

(a) Supported employment services include job development, training and on-going supervision to obtain paid employment. Training may focus on the individual worker and co-workers without disabilities capable of providing natural support.

(b) Examples of what supported employment services do not provide include, but are not limited to the following: support provided by someone who does not meet the minimum independent provider qualifications as specified in OAR 411-330-0070; illegal activities; legal fees; services or activities carried out in a manner that constitutes abuse of an adult; care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations; rate enhancements to an individual's existing employment/community inclusion service under OAR 309-047-0000 through 309-047-0140; payment for the supervisory activities rendered as a normal part of the business setting; incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program; payments for vocational training that is not directly related to an individual's supported employment program; and services that are not necessary or cost-effective. For purposes of this rule:

(A) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(B) Supported employment services under this rule must not replace or duplicate services that the individual currently receives through the Department-contracted Employment and Alternative to Employment Services governed by OAR 411-345-0010 through 411-345-0310.

(4) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to an individual's home, which are necessary to ensure the health, welfare, and safety of the individual in the home, or which enable the individual to function with greater independence around the home.

(a) Examples of environmental accessibility adaptations include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of ramps and grab-bars; removing or widening of doorways; handrails; electric door openers; adaptations of kitchen cabinet/sinks; modifications of bathroom facilities; hardening the environment; protective fencing; individual room air conditioners to maintain stable temperature as required by the individual's medical condition; overhead track systems to assist with lifting or transferring of individuals; installation of specialized electric and plumbing systems which are necessary to accommodate medical equipment; and supplies necessary for the welfare of the individual.

(b) Examples of what environmental accessibility supports do not provide include, but are not limited to: generic fire safety equipment; generic household maintenance and repair; adaptations or improvements to the home which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, adaptations or improvements to the home which add to the total square footage of the home; adaptations and modifications not constructed in accordance with applicable State or local codes; adaptations and improvements not necessary or cost-effective; and materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies.

(c) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(d) Providers of environmental accessibility adaptation involving building modifications or new construction must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(5) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for the individual. These services are fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family.

(6) Family Training. Family training services are training and counseling services provided to the family of an individual with developmental disabilities to increase their capabilities to care for, support and maintain the individual in the home.

(a) Family training services include, but are not limited to: instruction about treatment regimens and use of equipment specified in the In-Home Support Plan; information, education and training about the individual's

ADMINISTRATIVE RULES

disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under 677.100 or nursing under 678.040; social workers licensed under 675.530; counselors licensed under 675.715; organized conferences and workshops specifically related to the individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; training for paid caregivers; legal fees; training for families to carry out educational activities in lieu of school; vocational training for family members; and paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with In-Home Support Services funds.

(7) In-Home Support. In-Home Support services are care, training, supervision and protection provided based on the needs of the individual that must be met for the individual to live in the family home.

(a) In-Home Support services include, but are not limited to: providers who come into the family home and assist the individual with: activities of daily living; medical and physical health care including performance or delegation of nursing tasks; behavior management; maintenance of expressive and receptive skills in verbal and non-verbal language; functional application of acquired reading and writing skills; training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Examples of what In-Home Support services do not provide include, but are not limited to: services provided by the spouse of the individual; services available through private insurance or health plan; services provided by someone who does not meet the minimum provider qualifications of this rule; behavior management not based on positive behavioral theory and practice; legal fees; care, training or supervision that has not been arranged according to applicable state and federal wage and hour regulations; health and medical costs that the general public normally must pay; educational services for school-age individuals; and replacing support normally provided to the individual by a family member. For individuals who live in the family home, family members are expected to provide a minimum of 8 hours of support daily with the exception of respite.

(8) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(9) Physical Therapy. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(10) Respite Care. Respite care services are short-term care provided on an hourly or daily basis because of the absence, or need for relief of, per-

sons normally providing the care to an individual with developmental disabilities.

(a) Temporary or overnight respite services may be provided in a variety of settings, including, but not limited to: the home of the individual; a licensed group home or foster home; a licensed day care center; or a community care facility that is not a private residence.

(b) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the individual's family to attend school or work; vacation travel and lodging expenses; cost of the individual's meals unless part of a short-term stay in a licensed facility, group home or foster home.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, controls, or appliances specified in the In-Home Support Plan, which enable an individual to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment permitted under the Medicaid State Plan after the scope and limits of the State Medicaid Plan have been reached.

(a) Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; continuous positioning airway pressure, apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; and equipment such as plates, bowls, utensils, glasses, trays that allow an individual to eat independently or with minimum assistance.

(b) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: work-related clothing; generic household furnishings; personal clothing for the individual or family, and other purchases made because of financial need; any equipment or supplies that can be purchased by the individual through the Oregon Health Plan or private insurance, or obtained through other resources; illegal substances or materials; materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies; items which are needed solely to allow an individual to participate in school; items not of direct medical or remedial benefit to the individual; and equipment that is not necessary or cost-effective, experimental, not generally-accepted, or absolutely prohibited by the Oregon Health Plan.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope specified in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools. Educational services for school age individuals, such as: professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by In-Home Support Services funds.

(13) Transportation services. Transportation services are services that provide training or support in public or private transportation required for the individual to attend recreation, day programs, appointments, and related services according to an In-Home Support Plan.

(a) Transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; reimbursement on a per-mile basis for transporting an individual in a rural area into the nearest town once a week for shopping and recreational opportunities; assistance with purchase of a bus pass; and reimbursement of operational expenses of agency/staff vehicles used for transporting individuals not to exceed established rates.

(b) Transportation services do not include: medical transportation; purchase of individual or family vehicles; routine vehicle maintenance and repair; ambulance services; payment to a spouse of an individual recipient

ADMINISTRATIVE RULES

of In-Home Support services; costs for transporting someone other than the individual with disabilities.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0120

Abuse and Unusual Incidents

(1) Abuse prohibited. No adult as defined by OAR 411-330-0020(4), or individual as defined by 411-330-0020(25) will be abused nor will abuse be tolerated by any employee, staff or volunteer of the CDDP.

(a) Basic personnel policies and procedures. The CDDP must have in place personnel policies and procedures addressing suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation. The CDDP must also have in place personnel policies and procedures addressing disciplinary action, including conditions for termination of employment when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a CDDP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Immediate notification of allegations of abuse and abuse investigations. The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 411-330-0020(1)(a)(A) through (E) and (b)(A) through (F). When an abuse investigation has been initiated, the CDDP must also immediately notify the individual's legal representative or conservator. An individual's parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(c) Immediate notification. In the case of a serious illness, injury or death of an individual, the CDDP must immediately notify the individual's legal representative or conservator, parent, next of kin, designated contact person.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0130

Grievances and Appeals

(1) Grievances. The CDDP must implement written policies and procedures for individuals', their legal representatives and families' grievances. These policies and procedures must, at a minimum, provide for:

(a) Notification. The CDDP must inform each individual, each individual's legal representative, and family members orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to hearing according to OAR 411-330-0130(2) in the case of certain circumstances involving Medicaid services.

(b) Receipt of grievances from individuals, individuals' legal representatives, others acting on the behalf of individuals, and families;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances by the CDDP Program Manager within five working days following receipt of grievance;

(e) Submission to the CDDP director. If the grievance is not resolved, it must be submitted to the CDDP director for review. Such review must be completed and a written response to the grievant provided within 30 days;

(f) Submission to the Department. If the grievance is not resolved by the CDDP Director, it must be submitted to the Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of submission to the Department. The decision of the Administrator or designee will be final. Any further review

is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court; and

(g) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(2) Denial, termination, suspension, or reduction of services.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the CDDP must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The CDDP must use the Oregon Medical Assistance Program (OMAP) 3030 form, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the IHS Plan and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The adult individual or the adult individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (2)(c) of this rule.

(c) A notice required by sections (2)(a) or (2)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with OAR Chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) requests an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event will services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer or the Department renders a decision about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

ADMINISTRATIVE RULES

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals: An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The hearings officer must send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth work day following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and the Department. The proposed order will become a final order if no exceptions are filed within the time specified in subsection (2)(l)(B) of this rule;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department no later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

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

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0140

In-Home Support Service Operation

(1) Personnel Policies and Practices.

(a) Personnel files and qualifications records. The CDDP must maintain up-to-date written position descriptions for all Services Coordinators coordinating In-Home support services that includes written documentation of the following for each staff person:

(A) Reference checks and confirmation of qualifications prior to hire;

(B) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(C) Satisfactory completion of job-related inservice training;

(D) Oregon Department of Human Services approval to work based on criminal records review;

(E) Notification and acknowledgement of mandatory abuse reporter status;

(F) Any substantiated abuse allegations;

(G) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(H) Legal U.S. worker status.

(2) Services Coordinator training. The CDDP must provide or arrange for Services Coordinators to receive training needed to provide or arrange for the IHS services.

(3) Record requirements. The CDDP must maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1), and ORS 179.505 is applicable. Access to records by the Department does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Individual records. The CDDP must maintain and make available on request for Department review up to date records for each individual receiving In-Home services. These records must include:

(A) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal representative, or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070 and documentation that individual and individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) IHS Plan and reviews;

(F) Services Coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) Special requirements for IHS direct assistance expenditures. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services that are described in the IHS Plan as required to meet the support needs of individuals. These policies and procedures must include, but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(iv) 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 equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP must record the purpose, final cost, and date of receipt;

(ii) The CDDP must secure use of equipment costing more than \$500 through a written agreement between the CDDP 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;

(iii) The CDDP must obtain prior authorization from the Department for environmental accessibility adaptations to the home costing more than \$1500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing \$5000 or more are:

(I) Reviewed and approved by the Department before work begins and before final payment is made;

(II) 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 State's interest through liens or other legally available means; and

(v) The CDDP must obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to that structure.

ADMINISTRATIVE RULES

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to IHS plan or according to an agreement securing the State's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or 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.

(d) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(e) Records retention. Records must be retained in accordance with OAR Chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except client records) must be retained for a minimum of three years after the close of the contract period, or until audited. Client records must be kept for a minimum of seven years.

(4) Other operating policies and practices. The CDDP 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.

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

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0150

Quality Assurance

The CDDP must participate in statewide evaluation and regulation activities as directed by the Department.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0160

Inspections and Investigations

(1) Inspections and investigations required. The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Unannounced. Any inspection or investigation may be unannounced.

(3) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, or other proper authority; and

(b) Submitted to the Department, or other proper authority within the time allotted.

(4) Priority of investigation under Section (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
- (b) If the alleged victim is in danger or in need of immediate protective services; or
- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions will be taken.

(5) Investigations must be completed as prescribed by OAR 309-040-0200 through 309-040-0290, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and must include an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reason-

able cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence, there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(6) Upon completion of the abuse investigation by the Department or a law enforcement agency, the CDDP may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(7) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider(s). The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(8) Plan of improvement. A plan of improvement must be submitted to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

411-330-0170

Variations

(1) Criteria for a variance. Variances may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR chapter 411, division 330, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-330-0060(6)(a) through (r) and 411-330-0110 are specifically excluded from variance.

(2) Variance application. The CDDP requesting a variance must submit a written application to the Department that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's service, evidence that the variance is consistent with the individual's current IHS Plan.

(3) Department review. The Administrator or designee may approve or deny the request for a variance. This decision will be final.

(4) Notification. The Department must notify the CDDP of the decision. This notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices.

(5) Written approval. The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 – 430.670, 427.005 – 427.007, 417.340 – 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03

.....

Adm. Order No.: SPD 22-2003

Filed with Sec. of State: 12-22-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Transferred: 309-041-1750 to 411-340-0010, 309-041-1760 to 411-340-0020, 309-041-1770 to 411-340-0030, 309-041-1780 to 411-340-0040, 309-041-1790 to 411-340-0050, 309-041-1800 to 411-340-0060, 309-041-1810 to 411-340-0070, 309-041-1820 to 411-340-0080, 309-041-1830 to 411-340-0090, 309-041-1840 to 411-340-0100, 309-041-1850 to 411-340-0110, 309-041-1860 to 411-340-0120, 309-041-1870 to 411-340-0130, 309-041-1880 to 411-340-0140, 309-041-1890 to 411-340-0150, 309-041-1900 to 411-340-0160, 309-041-1910 to 411-340-0170, 309-041-1920 to 411-340-0180

Subject: These rulemaking actions implement permanent adoption of Support Services for Adults with Developmental Disabilities rules following expiration on December 27, 2003 of temporary amendments to these rules. These amendments are taken to: a) establish rules governing Support Services in Chapter 411; b) update language and definitions for consistency with current practice and application;

ADMINISTRATIVE RULES

c) permanently adopt temporary measures taken to enable the Department to remain within its 2003-05 budget; d) make rules for these services more consistent with Medicaid program requirements; and e) clarify process and procedural questions that have arisen during implementation of Support Services.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-340-0010

Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for Support Service Brokerages, for purchase of individual supports with support service funds, and for providers paid with support services funds to provide services to adults with developmental disabilities so that those adults may live in their own homes or in family homes. Services provided under this rule are intended to identify, strengthen, expand and, where required, supplement private, public, formal and informal support available to these adults so that they may exercise self-determination in the design and direction of their lives.

(2) Statutory authority. These rules are authorized by ORS 409.050 and 410.070, and carry out the provisions of 430.610 through 430.670, 427.005 through 427.007. These rules also carry out the provisions of 417.340 through 417.348 for families of adults with developmental disabilities.

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 309-041-1750, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0020

Definitions

As used in OAR 411-340-0010 through 411-340-0180:

(1) "Abuse" means:

(a) Except for Provider Organizations listed in OAR 411-340-0020(1)(b), 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 caused 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 and an adult; or

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(b) Activities described in OAR 411-320-0020(2)(b) through (c)(F) for Provider Organizations qualifying to be paid with support services funds as:

(A) 24-Hour Residential Programs licensed under OAR chapter 411, division 325;

(B) Adult Foster Homes licensed under OAR 309-040-0000 through 309-040-0100;

(C) Employment and Alternative to Employment programs certified under OAR chapter 411, division 345; or

(D) Supported Living Services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(4) "Administrator" means the Assistant Director, Department of Human Services, and Administrator of Seniors and People with Disabilities or that person's designee.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Basic Benefit" means the type and amount of Support Services available to each eligible individual, specifically:

(a) Access to Support Service Brokerage services listed in OAR 411-340-0120(1)(a) through (g) and, if required,

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (p) with no more than:

(A) \$9600 per Plan Year from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services waiver; and

(B) An amount equal to the state's General Fund contribution to the maximum amount available per Plan Year to a Medicaid recipient per OAR 411-340-0020(6)(b)(A) from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(7) "Basic Supplement" means the amount of support services funds in excess of the Basic Benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria. A Basic Supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (B).

(8) "Basic Supplement Criteria" means the written inventory of an individual's circumstances which is completed and scored by the Brokerage to determine whether the individual is eligible for annual support service funds in excess of the Basic Benefit due to extraordinary long-term need.

(9) "Certificate" means a document issued by the Department to a Support Services Brokerage or to a Provider Organization that certifies the Brokerage or Provider Organization is eligible to receive State funds for these services.

(10) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication method.

(11) "Chore services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture for safe access and egress. These services are provided when no one in the household is capable of either performing, or paying for, the services and when no other relative, caregiver, landlord, community/volunteer agency, or third-party payer is capable of or responsible for their provision.

(12) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(13) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(14) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the individual's support plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs. Supports are available to individuals who live alone, with roommates, or with family. The services include support designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(15) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(16) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

ADMINISTRATIVE RULES

(a) 24-hour residential services including, but not limited to, care provided in a group home, in a foster home, or through a supported living program; or

(b) Supports provided to an individual in the individual or family home that cost more than \$20,000 in funds designated by the Department specifically for that purpose for individuals with developmental disabilities per Plan Year for the July 1, 2001 through June 30, 2003 biennium or more than \$20,000 plus any legislatively-approved cost-of-living increments per Plan Year for each biennium thereafter.

(17) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(18) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(19) "Emergent status" means a temporary, unpredictable situation when an individual enrolled in a Support Service Brokerage may be allowed to receive Department-paid support exceeding \$20,000 per year to remain in his or her home or family home or to enter a short-term out-of-home residential placement without exiting Support Services. An individual will only be considered in emergent status if he or she is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the CDDP of the individual's county of residence has determined that the individual meets criteria for crisis or diversion services according to OAR 411-320-0160. Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS chapter 427 and imminent risk of loss of the individual's community support system. Services to maintain the individual in the community and stabilize the situation are crisis/diversion services according to OAR 411-320-1060, which may include short-term residential placement services indicated in the individual's Support Service Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan. Length of emergent status may only be authorized by the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis/diversion funds. In no case will emergent status for an individual exceed two hundred seventy (270) consecutive days in twelve (12) consecutive months.

(20) "Employer-related supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(21) "Entry" means admission to a Department-funded developmental disability service provider.

(22) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets/sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for

individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual; modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(23) "Environmental Modification Consultant" means either an Independent Provider or a Provider Organization paid with support services funds to provide advice to an individual, the individual's legal representative, or the individual's Personal Agent about the environmental accessibility adaptation required to meet the individual's needs.

(24) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(25) "Family," for determining individual eligibility for Support Services Brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(26) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home. This service includes: instruction about treatment regimens and use of equipment specified in the Individual Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions; and counseling for the family to relieve the stress associated with caring for an individual with disabilities. This service is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or habilitative support needs. The training is not provided to paid caregivers.

(27) "Fiscal Intermediary" means a person or agency that receives and distributes Support Services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(28) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(29) "Grievance" means a formal complaint by an individual, individual's legal representative, or a person acting on his/her behalf about services or employees of a Support Service Brokerage or Provider Organization.

(30) "Habilitation services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports, and community inclusion supports.

(31) "Home" means an individual's primary residence that is not licensed or certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

ADMINISTRATIVE RULES

(32) "Homemaker services" means support consisting of general household activities such as meal preparation and routine household care provided by a trained homemaker. The services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(33) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(34) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(35) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Support Service funds who personally provides services to the individual.

(36) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(37) "Individual Support Plan" or "ISP" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals. This ISP is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The ISP articulates decisions and agreements made through a person-centered process of planning and information-gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(38) "Integration" is defined in ORS 427.005 and means use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes which are in proximity to community resources and foster contact with persons in their community.

(39) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person or agency authorized by the court to make decisions about services for the individual.

(40) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(41) "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 an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. 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 40.295.

(42) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(43) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(44) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(45) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(46) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1)(a) through (g), who meets the requirements of 411-340-0150(4)(a) through (b), and who is:

(a) A trained employee of a Support Service Brokerage; or

(b) A person who has been engaged under contract to the Brokerage to allow the Brokerage to meet responsibilities in geographic areas where Personal Agent resources are severely limited.

(47) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(48) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(c) The process helps the individual and those significant to the individual to identify, use, and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(49) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(50) "Plan Year" means twelve (12) consecutive months used to calculate an individual's annual Basic Benefit. Unless otherwise set according to conditions of OAR 411-340-0120(4)(h) or 411-340-0130(4)(b)(G), the initial Plan Year begins on the start date specified on the individual's first ISP after enrollment in a Brokerage after that ISP is approved and signed by the CDDP authorizing implementation; subsequent Plan Years begin on the anniversary of the start date of this initial plan.

(51) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(52) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(53) "Primary Caregiver" means the person identified in an individual's ISP as providing the majority of care and support for an individual in the individual's home.

(54) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(55) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(56) "Provider Organization Director" means the employee of a Provider Organization responsible for administration and provision of services according to these rules.

(57) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(58) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(59) "Respite Care" means short-term care and supervision provided because of the absence, or need for relief of, persons normally providing the care to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as 8-hours-a-day, 5-days-a-week services or are provided to allow caregivers to attend school or work:

(a) Temporary Respite Care, which is provided on less than a 24-hour basis, and

(b) 24-Hour Overnight Care, which is provided in segments of 24-hour units that may be sequential.

(60) "Restraint" means any physical hold, device, or chemical substance which restricts, or is meant to restrict, the movement or normal functioning of an individual.

ADMINISTRATIVE RULES

(61) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(62) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom: The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority: The ability for a persons with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy: The arranging of resources and personnel—both formal and informal: that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility: The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(63) "Social Benefit" or "Social Service" means a service solely intended to assist an adult with disabilities to function in society on a level comparable to that of an adult who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved ISP.

(64) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home. Special diets can include: high caloric supplements; gluten-free supplements; diabetic, ketogenic or other metabolic supplements. Special diets are ordered by a physician and periodically monitored by a dietician. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(65) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances which enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. It does not include items not of direct medical or remedial benefit to the individual. All items meet applicable standards of manufacture, design, and installation.

(66) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other Support Services listed in OAR 411-340-0130(6)(a) through (p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social/sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revise the plan as needed.

(67) "Speech and Language Therapy services" means the services of a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(68) "Support" means assistance individuals require--solely because of the effects of disability--to maintain or increase independence, achieve community presence and participation, and improve productivity. This assistance is flexible and subject to change with time and circumstances.

(69) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(70) "Support Services" means the services of a Support Services Brokerage listed in OAR 411-340-0120(1)(a) through (g) as well as the uniquely determined activities and purchases arranged through the Brokerage. Support Services:

(a) Complement the existing formal and informal supports that exist for an individual living in his or her own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an ISP; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(71) "Support Service Brokerage" or "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, using the principles of self-determination described in OAR 411-340-0020(62).

(72) "Support Service Brokerage Director" or "Brokerage Director" means the employee of a publicly- or privately-operated Support Service Brokerage who is responsible for administration and provision of services according to these rules.

(73) "Support Service Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Department to be added to an individual's ISP to describe crisis/diversion services an individual is to receive while he or she is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the CDDP of the individual's county of residence.

(74) "Support Service Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each Support Service Brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1)(a) through (d) for such groups.

(75) "Support Services Funds" means public funds designated by the Support Services Brokerage for assistance with the purchase of supports according to each ISP.

(76) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of support services resources for individuals served by a Brokerage and described in OAR 411-320-0010 through 411-320-0200.

(77) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(78) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

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 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0030

Certification of Support Service Brokerages and Provider Organizations

(1) Certificate required. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage or operate a Support Service Brokerage without being certified under these rules. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a Provider Organization without either certification under these rules or current Department license or certification described in OAR 411-340-0170(1).

(a) Not transferable. Each certificate is issued only for the Support Service Brokerage, or for the Provider Organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application and is not transferable or assignable.

(b) Terms of certificate. Each certificate is issued for a maximum of two years.

ADMINISTRATIVE RULES

(c) Department review. The Department must conduct a review of the Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) prior to the issuance of a certificate.

(2) A Support Service Brokerage or a Provider Organization requiring certification under OAR 411-340-0170(2) must apply for initial certificate and for certificate renewal.

(a) Form. The application must be on a form provided by the Department and must include all information requested by the Department.

(b) Initial application. The applicant for certification as a Support Services Brokerage must identify the maximum number of individuals to be served.

(c) Renewal application. To renew certification, the Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of Brokerage certification, no increase in the maximum number of individuals to be served by the Brokerage may be certified unless specifically approved by the Department.

(d) Renewal application extends expiration date. Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and will extend the effective date until the Department or its designee takes action upon such application.

(e) Incomplete or incorrect information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application may result in denial, revocation or refusal to renew the certificate.

(f) Demonstrated capability. Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) Certification expiration, termination of operations, certificate return.

(a) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a Support Services Brokerage or a Provider Organization requiring certification under OAR 411-340-0170(2) will expire on the expiration date specified on the certificate.

(b) Termination of operation. If operation of a Support Services Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(4) Change of ownership, legal entity, legal status, management corporation. The Support Service Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) must notify the Department in writing of any pending action resulting in a 5% or more change in ownership and of any pending change in the Brokerage's or Provider Organization's legal entity, legal status or management corporation.

(5) New certificate required. A new certificate is required upon change in a Support Service Brokerage's or Provider Organization's ownership/legal entity or legal status. The Support Service Brokerage or Provider Organization must submit a certificate application at least 30 days prior to change in ownership/legal entity or legal status.

(6) Certificate denial, revocation, refusal to renew. The Department may deny, revoke or refuse to renew a certificate when it finds the Brokerage or Provider Organization, the Brokerage or Provider Organization director, or any person holding five percent or greater financial interest in the Brokerage or Provider Organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance; or

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an on-site review of the service site by the Department for the purpose of investigation or certification); or

(c) Has been convicted of a felony; or

(d) Has been convicted of a misdemeanor associated with the operation of a Brokerage or Provider Organization; or

(e) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, program finances or individuals' funds; or

(f) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) Notice of certificate denial, revocation, or refusal to renew. Following a Department finding that there is a substantial failure to comply

with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section OAR 411-340-0030(6)(a) through (g) has occurred, the Department may issue a notice of certificate revocation, denial or refusal to renew.

(8) Immediate suspension of certificate. In any case where the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(9) Hearing. Following issuance of a notice of certificate denial, revocation, refusal to renew, or suspension, the Department will provide the opportunity for a hearing pursuant to OAR 411-340-0030(9)(a) through (c).

(a) Hearings rights and administrative review. An applicant for a certificate, or certificate holder, upon written notice from the Department of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS chapter 183. In addition to, or in lieu of, a contested case hearing, the applicant or certificate holder may request a review by the Department Administrator or designee of denial, suspension, revocation or refusal to renew a certificate. This review does not diminish the right of the applicant or certificate holder to a hearing.

(b) Request for hearing. Upon written notification by the Department of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-340-0030(9)(a), the applicant/certified program will be entitled to a hearing in accordance with ORS chapter 183 within 60 days of receipt of notice. The request for a hearing must include an admission or denial of each factual matter alleged by the Department and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant/certified program may have.

(c) Hearing rights under OAR 411-340-0030(8). In the event of a suspension pursuant to 411-340-0030(8) and during the first 30 days after the suspension of a certificate, the certified program will be entitled to an administrative review within 10 days after its written request to the Department for a review regarding certificate suspension. Any review requested after the end of the 30-day period following certificate suspension will be treated as a request for hearing under OAR 411-340-0030(9)(b). If following the administrative review the suspension is upheld, the certified program may request a hearing pursuant to the Contested Case Provisions of ORS chapter 183.

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; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0040

Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) Abuse prohibited. Any adult as defined by OAR 411-340-0020(5) or individual as defined by 411-340-0020(36) will not be abused nor will abuse be condoned by any employee, staff or volunteer of the Brokerage or Provider Organization.

(a) Basic personnel policies and procedures. Support Service Brokerages and Provider Organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a Brokerage or Provider Organization is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a Brokerage or Provider Organization employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

ADMINISTRATIVE RULES

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Copies sent to Support Specialist and Brokerage. Copies of all unusual incident reports involving abuse that occurs while an individual is receiving Brokerage or Provider Organization services must be sent to the CDDP Support Specialist. Copies of reports of all unusual incidents that occur while the individual is receiving services from a Provider Organization, must be sent to the individual's Brokerage within five working days of the incident.

(c) Immediate notification of allegations of abuse and abuse investigations. The Brokerage must immediately report to the CDDP, and the Provider Organization must report to the CDDP with notification to the Brokerage, any incident or allegation of abuse falling within the scope of OAR 411-340-0020(1). When the CDDP has initiated an abuse investigation, the CDDP must ensure that either the Support Specialist or the Brokerage also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(d) Immediate notification. In the case of a serious illness, injury or death of an individual, the Brokerage or Provider Organization must immediately notify:

(A) The individual's legal guardian or conservator, parent, next of kin, designated contact person or other significant person;

(B) The Community Developmental Disability Program; and

(C) In the case of the Provider Organization, the individual's Support Services Brokerage.

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 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0050

Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Inspections and investigations by the Department, CDDP or proper authority. The Department, CDDP, or proper authority will perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, CDDP or proper authority; and

(b) Submitted to the Department within the time allotted.

(5) Priority of investigation under (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or CDDP has determined to initiate an investigation, the Support Services Brokerage or Provider Organization must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions will be taken.

(6) The Department or CDDP must conduct investigations as prescribed in OAR 309-040-0200 through 309-040-0290, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and must complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or

attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the persons(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation by the Department, CDDP, or a law enforcement agency, a service provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate Support Service Brokerage or Provider Organization.

(9) Plan of improvement. A plan of improvement must be submitted to the Department for any noncompliance found during an inspection pursuant to OAR 411-340-0050(1)(a).

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; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0060

Grievances and Appeals in Support Service Brokerages and Provider Organizations

(1) Grievances. Support Services Brokerages and Provider Organizations must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) Informal resolution. These policies and procedures must provide opportunity for an individual or someone acting on behalf of the individual to informally discuss and resolve any allegation that a Brokerage or Provider Organization has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity must not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes;

(b) Receipt of grievances. The policies and procedures must describe how the Brokerage or Provider Organization receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the CDDP and notify the Brokerage Director and, if applicable, the Provider Organization Director;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances within five working days following receipt of grievance;

(e) Review by the Brokerage Director if the grievance involves Brokerage staff or services, or by the Provider Organization Director if the grievance involves Provider Organization staff or services, if the grievance is not or cannot be resolved with Brokerage or Provider Organization staff, respectively. Such review must be completed and a written response to the grievant provided within 15 days following receipt of the grievance; and

(f) Third-party review when grievances are not resolved by the Brokerage Director or Provider Organization Director.

(A) Unless the grievant is a Medicaid recipient who has elected to initiate hearing processes according to OAR 411-340-0060(3), grievances having to do with development of an individual's ISP, services at variance with the type, amount, frequency, or duration specified in an individual's written ISP, or the selection of any provider of service specified in the individual's ISP must be submitted to the CDDP for review.

(i) This review must be completed according to the CDDP dispute resolution policy and a written response must be provided to the grievant within the timelines described in that policy.

(ii) If the grievance remains unresolved after review by the CDDP, it may be submitted to the Department Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for Department review. The decision of the Department Administrator or designee will be final unless the grievant is a Medicaid recipient who chooses to initiate further hearing according to OAR 411-340-0060(3).

(B) When a grievance does not involve the circumstances of OAR 411-340-0060(1)(f)(A), and the grievant is not a Medicaid recipient electing to initiate hearing processes according to 411-340-0060(3), the grievance may be submitted directly to the Department Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for Department review. The decision of the Department Administrator or designee is final.

ADMINISTRATIVE RULES

(g) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(h) Copies of all grievances to Support Specialist. Copies of the documentation on all grievances must be sent by the Brokerage or Provider Organization to the Support Specialist within 15 working days of initial receipt of the grievance.

(2) Notification. The Brokerage and Provider Organization must inform each individual, or the individual's legal representative, orally and in writing, of the Brokerage or Provider Organization grievance policy and procedures.

(a) The Brokerage and Provide Organization must inform each individual Medicaid recipient, or the individual Medicaid recipient's legal representative, orally and in writing, of the right of a Medicaid recipient to move directly to hearing as per OAR 411-340-0060(3) at any point if the Brokerage, Provider Organization or Department does not address a grievance satisfactorily.

(b) Information must be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

(3) Denial, termination, suspension, or reduction of services for individual Medicaid recipients.

(a) Each time the Brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the Brokerage must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The Brokerage must mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The Brokerage must use the Oregon Medical Assistance Program (OMAP) form 3030, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the ISP and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The individual or the individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the Brokerage. At the time the Brokerage denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (3)(c) of this rule.

(c) A notice required by sections (3)(a) or (3)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the Brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the Brokerage's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the Brokerage mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which Brokerage services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the Brokerage, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the Brokerage mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event must services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the Brokerage.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals. An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department must send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and the Department.

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves.

(C) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

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 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

ADMINISTRATIVE RULES

411-340-0070

Support Service Brokerage and Provider Organization Personnel Policies and Practices

(1) Personnel files and qualifications records. Brokerages and Provider Organizations must maintain up-to-date written position descriptions for all staff as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each staff person:

(a) Reference checks and confirmation of qualifications prior to hire;
(b) Written documentation of a criminal record clearance by the Department;

(c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory abuse reporter status;

(e) Written documentation of any substantiated abuse allegations;

(f) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(g) Legal U.S. worker status.

(2) General staff qualifications. Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) Drug-Free Workplace. Each Brokerage and Provider Organization regulated by OAR chapter 411, division 340 must be a drug-free workplace.

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; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0080

Support Service Brokerage and Provider Organization Records

(1) Confidentiality. Brokerage and Provider Organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.

(2) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, Brokerages and Provider Organizations requiring certification under OAR 411-340-0170(2) will be considered "providers" as defined in ORS 179.505(1), and 179.505 will be applicable. Access to records by the Department does not require authorization by the individual or family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) General financial policies and practices. The Support Service Brokerage or Provider Organization must:

(a) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(b) As a Provider Organization, or as a Brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds must not exceed the customary charges to private clients for any like item or service charged by the Brokerage or Provider Organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(4) Records retention. Records must be retained in accordance with OAR Chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period. Individual records must be kept for a minimum of seven years.

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

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; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0090

Common Standards: Variances

(1) Criteria for a variance. Variances may be granted to a Brokerage or Provider Organization if the Brokerage or Provider Organization lacks the resources needed to implement the standards required in OAR Chapter 411, Division 340, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-340-0130, Using Support Services Funds to Purchase Support, and 411-340-0140, Using Support Services Funds for Certain Services Is Prohibited, are specifically excluded from variance except for individuals transitioning to Brokerage services from Self-Directed Support Services according to 309-041-1850(2)(a)(A) who may seek variance to continue supports arranged and paid through that service for the first 90 calendar days after enrollment in the Brokerage or up to the date of authorization of the initial ISP, whichever is earliest.

(2) Variance application. The Support Service Brokerage or Provider Organization requesting a variance must submit, in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with a currently-approved ISP according to OAR 411-340-0120(6).

(3) Department review. The Administrator or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the Brokerage or the Provider Organization and the CDDP of the decision. This notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices.

(5) Appeal. Appeal of the denial of a variance request must be made in writing to the Department Administrator or designee, whose decision is final.

(6) Duration of variance. The Department will determine the duration of the variance.

(7) Written approval. The Brokerage may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & ORS 410.070

Stats. Implemented: ORS 430.610 through 430.670, 427.005 through 427.007 & 417.340 through 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; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0100

Eligibility for Support Service Brokerage Services

(1) Non-discrimination. Adults determined eligible according to OAR 411-340-0100(2)(a) through (e) must not be denied Support Service Brokerage services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) Eligibility. The CDDP of an individual's county of residence may find the individual eligible for a Support Services Brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for Developmental Disability Services by the CDDP;

(b) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services;

(c) The individual is not enrolled in Comprehensive Services;

(d) At the time of initial proposed enrollment in the Brokerage, the individual is not receiving short-term services from the Department because she or he is eligible for, and at imminent risk of, civil commitment under ORS chapter 427; and

(e) The individual or the individual's legal representative has chosen to use a Support Service Brokerage for assistance with design and management of personal supports.

(3) Concurrent services. Individuals must not be eligible for service by more than one Support Services Brokerage unless the concurrent service:

(a) Is necessary to effect transition from one Support Service Brokerage to another; and

(b) Is part of a collaborative plan between the affected Support Service Brokerages in which services and expenditures are not duplicated.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007, 417.340 - 417.348

ADMINISTRATIVE RULES

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; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

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 development July 1, 2001 through June 30, 2005. 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, 2005, 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, 2005, 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

411-340-0120

Support Service Brokerage Services

(1) Each Support Service Brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the Brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct support providers;

(e) Fiscal intermediary activities in the receipt and accounting of Support Service funds on behalf of an individual in addition to making payment with the authorization of the individual;

(f) Employer-related supports, assisting individuals to fulfill roles and obligations as employers of support staff when plans call for such arrangements; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(h) Support Service Brokerages must apply the principles of self-determination as defined in OAR 411-340-0020(62) to provision of services required in OAR 411-340-0120(1)(a) through (g).

(2) Person-centered planning process required. A Support Service Brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(3) Health and safety issues. The planning process must address basic health and safety needs and supports, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(4) Written plan required. The Personal Agent must write an initial ISP that is signed by the individual (or the individual's legal representative) and, unless circumstances allow exception under OAR 411-340-0120(4)(h), dated within 90 days of entry into Support Service Brokerage services and at least annually thereafter. When an individual's legal representative must sign the plan, the individual's Personal Agent must also work with the legal representative to inform the individual as completely as possible of the contents of the plan and to obtain, to the degree possible, the

ADMINISTRATIVE RULES

individual's agreement to the plan. The plan or attached documents must include:

- (a) The individual's name;
- (b) A description of the supports required, including the reason the support is necessary;
- (c) Projected dates of when specific supports are to begin and end;
- (d) Projected costs, with sufficient detail to support estimates;
- (e) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;
- (f) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general provider) of supports to be purchased with support services funds; and
- (g) Schedule of plan reviews.

(h) The schedule of the first new Support Services ISP developed in compliance with OAR 411-340-0120(2) after an individual enters a Brokerage may be adjusted to promote continuity of services one time for any individual entering a Brokerage in certain circumstances. Such an adjustment will interrupt any Plan Year in progress and establish a new Plan Year for the individual beginning on the date the first new ISP is approved and signed by the CDDP authorizing implementation. Circumstances where this adjustment is permitted include:

(A) Transition of individuals receiving Self-Directed Support Services governed by 309-041-1110 through 1170 to Support Services between November 1, 2001, through June 30, 2002. The date of the individual's first ISP after enrollment in a Support Services Brokerage may be adjusted to correspond to the expiration date of the individual's Self-Directed Support Plan in place at the time of transition to the Support Service Brokerage if the Self-Directed Support Plan otherwise meets the requirements of OAR 411-340-0120 (4)(a) through (g), has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage, and does not authorize support services fund expenditures in excess of the average monthly amount available through the Basic Benefit;

(B) Transition of individuals receiving Employment and Alternative to Employment services regulated by OAR chapter 411, division 345, without Department-paid residential services, to Support Services July 1, 2003. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's ISP in place at the time of transition or to October 1, 2003, whichever is later, when the individual is among those required to transition into Support Services from Employment and Alternative to Employment services July 1, 2003, and when the ISP developed while the individual is still enrolled in Employment and Alternative to Employment services has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage;

(C) Transition of individuals receiving Family Support Services for Children with Developmental Disabilities, regulated by OAR chapter 411, division 305, Children's Intensive In-Home Services (CIIS), regulated by OAR chapter 411, division 300, or Medically Fragile Children (MFC) Services, regulated by OAR chapter 309, division 044, when those individuals are 18 years of age. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's annual plan (Child and Family Support Plan (Family Support), Complete Plan of Care (CIIS), or Comprehensive Plan of Care (MFC)) in place at the time the individual turns 18 years of age when the annual plan developed while the individual is still receiving Family Support, CIIS, or MFC services has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage; or

(D) Transition of individuals receiving other Department-paid services who are required by the Department to transition to Support Services. The date of the individual's first Support Services ISP may be adjusted to correspond to the expiration date of the individual's plan for services which has been developed according to regulations governing Department-paid services the individual receives prior to transition, is current at the time designated by the Department for transition to Support Services, and is approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage.

(5) Professional or Other Service Plans. When applicable:

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase care and services requiring the education and training of a licensed professional nurse; and

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be attached when an individual enrolled in a Brokerage:

(A) Has been determined eligible for crisis/diversion services according to OAR 411-320-0160 by the CDDP of the individual's county of residence; and

(B) The individual is in emergent status in a short-term out-of-home residential placement as part of his or her crisis/diversion services

(6) CDDP Support Specialist approval prior to implementation. With the exception of circumstances indicated in 411-340-0120(6)(c), the Support Services Brokerage must obtain written CDDP Support Specialist approval prior to implementation of:

(a) Initial and annual Individual Support Plans; and

(b) Significant changes in the ISP which include, but are not limited to, changes in the types of support purchased with support services funds and changes in supports which will cause total Plan Year expenses to exceed original estimates by more than 10%, but which do not include changes in the providers chosen to provide direct assistance to the individual.

(c) When immediate, unexpected, and significant change in the type of support purchased with support services funds is necessary outside of the normal hours of CDDP operation and to prevent injury or harm to the individual, the Brokerage may implement the change but must obtain written confirmation within 10 calendar days from the date of the change from the CDDP Specialist indicating that the change was appropriate and, if applicable, that ongoing change in services is approved.

(7) Periodic review of plan and resources. The Personal Agent will conduct and document reviews of plans and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the ISP;

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan, assessing and revising goals as needed;

(B) Record final Support Services fund costs;

(C) Note effectiveness of purchases based on Personal Agent observation as well as individual satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(8) Transition to another Support Service Brokerage. At the request of an individual enrolled in Brokerage services who has selected another Brokerage, the Support Service Brokerage must collaborate with the receiving Brokerage and the CDDP of the individual's county of residence to effect transition of support services.

(a) If the Department has designated and contracted funds solely for the support of the transitioning individual, the Support Services Brokerage must notify the Department to consider transfer of the funds for the individual to the receiving Support Services Brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new Brokerage while a new plan is negotiated and approved.

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 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

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.

(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 411-340-0020(6) unless individ-

ADMINISTRATIVE RULES

ual circumstances meet the conditions of the exceptions indicated in 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 a 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) calendars 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 crisis/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

ADMINISTRATIVE RULES

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.

(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, and 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;

(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) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) According to 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

ADMINISTRATIVE RULES

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

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

Support Service funds must not be used to pay for:

(1) Services, materials, or activities that are illegal;

(2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-340-0020(1);

(3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(6) Individual or family vehicles;

(7) Health and medical costs that the general public normally must pay, including: medications; health insurance co-payments; dental treatments and appliances; medical treatments; dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees;

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(11) Individual care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of support as defined in OAR 411-340-0020(68), or do not meet the definition of social benefits as defined in 411-340-0020(63);

(13) Educational services for school-age individuals over the age 18, including professional instruction, formal training and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(14) Services, activities, materials, or equipment that can be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(15) Unless under certain conditions and limits specified in rate-setting guidelines published by the Department, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds;

(17) Services when there is sufficient evidence to believe that the individual or individual's representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use Support Service Brokerage resources, or otherwise knowingly misused public funds associated with Brokerage services.

(18) Services which, in the opinion of the individual's Personal Agent, are characterized by failure to act/neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to the failure to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult by any other person. However, no person may be deemed neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

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 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

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.

ADMINISTRATIVE RULES

ation 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

(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.

(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

ADMINISTRATIVE RULES

(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 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 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

411-340-0160

Standards for Independent Providers Paid with Support Services Funds

(1) General independent provider qualifications. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and procedures for review of criminal history;

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or individual's legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;

(2) Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) Social/sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social/sexual consultation services; and

(b) Submit a resume to the Brokerage indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social/sexual consultant.

(4) Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the Brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(5) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that will make the home safe and accessible for the individual.

(6) Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR Chapter 808, Landscape Contractors.

(7) Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

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; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

411-340-0170

Standards for Provider Organizations Paid with Support Services Funds

(1) Provider Organizations with current license or certification. A provider organization's license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR 309-040-0000 through 309-040-0100 for Adult Foster Homes or certified under OAR chapter 411, division 345, Employment and Alternative to Employment Services, or OAR 309-041-0550 through 309-041-0830, Supported Living Services, may not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

(a) Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, train qualified staff;

(B) Provide services according to Individual Support Plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

ADMINISTRATIVE RULES

(b) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet standards for qualification of independent providers outlined in OAR 411-340-0160.

(c) Provider Organizations developing new sites, owned or leased by the Provider Organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of OAR 411-340-0170(2)(f) in each such site.

(2) Provider Organizations requiring certification under OAR chapter 411, division 340. A Provider Organization without current license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR 309-040-0000 through 309-040-0100 for Adult Foster Homes or current certification under OAR chapter 411, division 345, Employment and Alternative to Employment, or OAR 309-041-0550 through 309-041-0830, Support Living Services, must be certified as a provider organization according to these rules prior to selection for providing services listed in OAR 411-340-0130(6)(a) through (p) and paid for with support services funds.

(a) Basic policies and procedures required. The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Policies and procedures required in OAR 411-340-0040 through 411-340-0090 related to abuse and unusual incidents, inspections and investigations, grievances and appeals, personnel policies and practices, records, and variances.

(B) Individual rights. The program must have and implement written policies and procedures which:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation which may include, but is not limited to: staff borrowing from or loaning money to individuals; witnessing wills in which the staff or provider organization is beneficiary; or adding the staff member or provider organization name to the individual's bank account(s) or other personal property without approval of the individual or individual's legal representative; and

(C) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in (OAR) 411-340-0170(2) (f) through (k) and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The provider organization must develop a written service agreement with the individual or individual's legal representative and must deliver services according to that agreement. The written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for his or her own safety and is missing while in the community under the care of the provider agency.

(c) Individual Records. The program must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address, and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the Support Services Brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors or volunteers must have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the provider organization to provide services.

(e) General training requirements. The provider organization must ensure that employees, contractors, and volunteers receive training appropriate to scope of the provider organization's services.

(f) Additional standards for services provided in provider organization owned or leased site. Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites must meet the following minimum requirements:

(A) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephone(s); and

(ii) The telephone numbers of the Provider Organization Director, and other persons to be contacted in case of emergency must be posted by designated telephone(s).

(C) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the Provider Organization for three years.

(D) Emergency evacuations. The support agency must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each support agency must conduct an unannounced evacuation drill each month when individuals are present;

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the support agency for at least two years following the drill. It must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or individual's legal representative, and the provider organization director; and

(II) Be presented as a variance request per OAR 411-340-0090.

(E) Adaptations required for sensory or physically impaired. The support agency must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The provider organization must assure that at least once every three years health and safety inspection(s) are conducted.

(i) The inspection(s) must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection(s) must be performed by: the Oregon Occupational Safety and Health Department; the service's worker's compensation insurance carrier; or an appropriate expert such as a licensed safety engineer or consultant as approved by the Department; and the Oregon Health Department, when necessary.

(iii) The inspection(s) must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) Fire and Life Safety Inspections for Owned, Leased, or Rented Buildings and Property. The service provider must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Staffing requirements.

ADMINISTRATIVE RULES

(i) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff must have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical need(s) identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention need(s) as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing: emergency medical intervention; treatment and documentation of illness and health care concerns; administering, storing and disposing of prescription and non-prescription drugs including self administration, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes: health status; changes in health status observed during hours of service; any remedial and corrective action required and when such actions were taken if occurring during hours of service; and a description of any restrictions on activities due to medical limitations;

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed; and

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders.

(vi) Unused, discontinued, outdated, or recalled drugs must not be administered by the agency provider.

(D) If required to maintain a Medication Administration Record, the MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director or designee.

(E) Safeguards to prevent adverse medications reactions must be utilized that include:

(i) Maintaining information about the effects and side-effects of medications the agency has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the individual, individual's designee, or individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another. A record of visits to medical professionals, consultants or therapists if facilitated or provided by the service.

(h) Additional standards for providing transportation. Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers; and

(D) Carry in vehicles a fire extinguisher and first aid kit.

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles transporting individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with program or another individual's funds, or the program becoming an individual's guardian or conservator; and

(B) The program's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the program, or of any funds within the custody of the program that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The provider organization must have and implement a written policy concerning behavior intervention procedures. The provider organization must inform the individual and individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice as defined by OAR 411-340-0020(51) and must be:

(i) Approved in writing by the individual or the individual's legal representative;

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences; and

(k) Additional standards for supports that involve restraints.

(A) The provider organization must only employ physical restraint:

(i) As part of an ISP that meets OAR 411-340-0020(37);

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Staff training. Provider organization staff members who need to apply restraint under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in his/her personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the agency provider director or designee, or individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the agency provider, if used more than three times in a six month period.

(D) Physical restraint must be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(E) Incident report. All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040 . The report must include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type and length of time, of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member(s) applying the restraint; and

(v) Description of the incident.

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 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

ADMINISTRATIVE RULES

411-340-0180

Standards for General Business Providers

(1) General Business Providers providing services to individuals and paid with support services funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

- (a) A license under ORS 443.015 for a home health agency;
- (b) A license under ORS 443.315 for an in-home care agency;
- (c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board or OAR chapter 808, Landscape Contractors, as applicable, for a provider of environmental accessibility adaptations;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing specialized diets.

(2) Services provided and paid for with support services funds must be limited to those within the scope of the general business provider's license.

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; Renumbered from 309-041-1920, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03

Adm. Order No.: SPD 23-2003

Filed with Sec. of State: 12-22-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Transferred: 309-047-0000 to 411-345-0010, 309-047-0005 to 411-345-0020, 309-047-0010 to 411-345-0030, 309-047-0015 to 411-345-0040, 309-047-0018 to 411-345-0050, 309-047-0025 to 411-345-0060, 309-047-0030 to 411-345-0070, 309-047-0035 to 411-345-0080, 309-047-0040 to 411-345-0090, 309-047-0045 to 411-345-0100, 309-047-0050 to 411-345-0110, 309-047-0055 to 411-345-0120, 309-047-0060 to 411-345-0130, 309-047-0065 to 411-345-0140, 309-047-0070 to 411-345-0150, 309-047-0075 to 411-345-0160, 309-047-0080 to 411-345-0170, 309-047-0085 to 411-345-0180, 309-047-0090 to 411-345-0190, 309-047-0095 to 411-345-0200, 309-047-0100 to 411-345-0210, 309-047-0105 to 411-345-0220, 309-047-0110 to 411-345-0230, 309-047-0115 to 411-345-0240, 309-047-0120 to 411-345-0250, 309-047-0125 to 411-345-0260, 309-047-0130 to 411-345-0270, 309-047-0133 to 411-345-0280, 309-047-0135 to 411-345-0290, 309-047-0140 to 411-345-0300

Subject: These rulemaking actions implement permanent adoption of Employment and Alternative to Employment Services for Individuals with Developmental Disabilities rules following expiration on December 27, 2003 of temporary amendments to these rules. These amendments are taken to: (a) amend and renumber existing rules governing the Employment and Alternative to Employment Services for Individuals with Developmental Disabilities rules; (b) implement the Staley Lawsuit Settlement; (c) meet Federal Title XIX waiver requirements; and (d) match legislative allocations.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-345-0010

Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards by which Oregon Department of Human Services approves programs that provide employment and alternatives to employment services for individuals with developmental disabilities.

(2) Statutory authority. These rules are authorized by ORS 409.050 and 410.070 and carry out the provisions of 430.610, 430.630, and 430.670.

(3) Mission Statement. One mission of the Oregon Department of Human Services is to provide support services that enhance the quality of life of persons with developmental disabilities.

(a) Employment and alternatives to employment services are key to the service delivery system and are critical to achieving this mission. The term "Employment Services" refers to the variety of non-sheltered and sheltered services that employ individuals. Oregon Department of Human Services recognizes supported employment as a desired method of providing employment services. "Alternatives to Employment Services" includes those services for individuals whose age or condition preclude employment situations. The overall purpose of employment and alternative to employment services is to provide services that promote individuals' opportunities for integration, independence and productivity and that are based upon individual needs.

(b) The service provider is responsible for developing and implementing policies, procedures and plans that ensure that the requirements of this rule are met.

(c) In addition, the service provider must ensure compliance with all applicable local, state and federal laws and regulations that apply to the type of business it runs.

(d) As a member of each individual's ISP team, the service provider has the responsibility to participate in the ISP process as required by this rule. It is through the ISP process that local providers, advocates, family members and community mental health program representatives determine with individuals the types of services to be delivered to the individual.

(e) The purpose of this rule is to ensure that the employment and alternative to employment service provider meets basic management, programmatic, health and safety and human rights regulations for those individuals receiving services funded by the Oregon Department of Human Services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0020

Definitions

As used in these rules, the following definitions apply:

(1) "Abuse of an adult" as defined in OAR 309-040-0200 to 309-040-0290 includes but is not limited to:

(a) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(b) Any physical injury caused 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 service provider, or other staff and the adult. Sexual exploitation also includes failure of staff to discourage sexual advances toward staff by individuals served. For situations other than those involving an employee, service provider, or other staff 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) Failure to act, or neglect that leads to, or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of an adult, including but not limited to the failure by a service provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(f) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services. However, it is not considered verbal mistreatment in situations where the consequences of non-compliance may result in termination, if agreed upon by the ISP;

(g) Placing restrictions on an individual's freedom of movement by seclusion in a locked room under any condition, restriction to an area of the place of employment or from access to ordinarily accessible areas of the place(s) of employment, unless arranged for and agreed to on the Individual's Support Plan;

(h) Using restraints without written physician's order, or unless an individual's actions present an imminent danger to himself/herself or others and in such circumstances until other appropriate action is taken by medical, emergency or police personnel or unless arranged for and agreed to on the ISP;

(i) Financial exploitation that may include, but is not limited to: unauthorized rate increases; staff borrowing from or loaning money to individuals; witnessing wills in which the program is beneficiary; or adding the program's name to the individual's bank account(s) or other personal prop-

ADMINISTRATIVE RULES

erty without approval of the individual or his/her legal guardian and notification of the case manager; and

(j) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for staff's own benefit, commingling an individual's funds with program or another individual's funds, or becoming guardian or conservator.

(2) "Abuse investigation and protective services" means an investigation as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of medication" means the act of a staff member, who is responsible for the individual's care, of placing a medication in, or on, an individual's body.

(4) "Adult" means a person 18 years or older with developmental disabilities for whom services are planned and provided.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(7) "Alternative to Employment Service" means any service that has as its primary goal(s) addressing the academic, recreational, social or therapeutic needs of the individuals for whom it serves and is conducted away from the individual's residence.

(8) "Annual ISP Meeting" means an annual meeting, coordinated by a case manager of the community mental health program, which is attended by the ISP team members (OAR 411-345-0020(29)) and other persons such as an advocate as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(9) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide employment and/or alternatives to employment services for individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(10) "Case manager" means an employee of the community mental health program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate and monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(11) "Certificate" means a document issued by Seniors and People with Disabilities to a provider of employment and/or alternative to employment services which certifies that the provider is eligible to receive state funds for the provision of these services.

(12) "Choice" means the individual's expression of preferences of activities and services through verbal, sign language or other communication method.

(13) "Community based service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation and/or integration.

(14) "Community mental health program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Department.

(15) "Complaint investigation" means an investigation of any allegation which has been made to a proper authority that the service provider has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(16) "Controlled substance" means any drug classified as Schedules 1-5 under the Federal Controlled Substance Act.

(17) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities, or are elderly, or have physical disabilities..

(18) "Developmental disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(19) "Director" means the individual responsible for administration of the employment or alternative to employment service and provision of support services for individuals.

(20) "Employment Service" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(21) "Entry" means admission to a Department-funded developmental disability service.

(22) "Exit" means termination from a Department-funded developmental disability service provider. Exit from a service does not include transfer within a service.

(23) "Facility Based Service" means any service or program that occurs in a location serving more than eight individuals.

(24) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(25) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(26) "Independence" is defined as the extent to which persons with mental retardation or developmental disabilities, with or without staff assistance, exert control and choice over their own lives.

(27) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(28) "Individual Support Plan" or "ISP" means a written plan of support and training services for an individual covering a 12-month period which addresses an individual's support needs and each service provider's program plan. This written plan of training services was formerly referred to as Individual Habilitation Plan (IHP).

(29) "Individual Support Plan Team" or "ISP team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, and advocate or others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership may be determined by the ISP team members.

(30) "Integration" means that persons with mental retardation or other developmental disabilities live in the community and use the same community resources that are used by and available to other members of the community, participate in the same community activities other community members participate in, and have contact with other community members. For the purpose of this rule, it is further defined as a location where eight or fewer individuals are in an area and have regular contact with persons without a developmental disability.

(31) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(32) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(33) "Physical restraint" means restricting the movement of an individual or restricting the movement or normal function of a portion of the individual's body.

(34) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(35) "Productivity" is defined in ORS 427.005(14) as "engagement in income producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community."

(36) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds as possible.

(37) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This

ADMINISTRATIVE RULES

includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(38) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s) without supervision.

(39) "Service provider" or "Service" means a public or private community agency or organization that provides recognized mental health or developmental disability service(s) and is approved by the Department or other appropriate agency to provide these service(s). For the purpose of this rule "provider" or "Program" is synonymous with "service provider."

(40) "Significant other" means a person selected by the individual to be his/her friend.

(41) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds contracted through the Department.

(42) "Support" means those ancillary services other than direct training including, but not limited to, assisting an individual to maintain skill competencies, achieve community access and social integration, enhance productivity, increase independent functioning and enjoy a satisfying lifestyle. Support also means training, the systematic, planned maintenance, development or enhancement of employment, social or self care skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs.

(43) "Supported Employment" means the provision of situational assessment, job development, job training and ongoing support necessary to place, maintain or change the employment of an individual in an integrated work setting. Work must be performed on a full or part-time basis, averaging at least 20 hours per week for each pay period. The individual is compensated in accordance with the Fair Labor Standards Act.

(44) "Transfer" means movement of an individual from one site to another administered by the same service provider and which has not been addressed within the ISP.

(45) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(46) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year minus the following: personal/vacation/sick leave allowed by the service provider or employer; holidays as recognized by the State of Oregon; and up to four days for all-staff in-service training. Any deviation from the 25 hours per week per individual served must be agreed to and documented by the ISP team.

(47) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0030

Issuance of Certificate

(1) Certificate required. No person or governmental unit acting individually or jointly with any other person or governmental unit will establish, conduct, maintain, manage or operate an employment or alternative to employment service without being certified.

(2) Not transferable. Each certificate is issued only for the employment or alternative to employment service and persons or governmental units named in the application. No certificate is transferable or assignable.

(3) Terms of certificate. Each certificate is issued for a maximum of three years.

(4) Service provider review. As part of the certificate renewal process the service provider must conduct a self-evaluation based upon the requirements of this rule.

(a) The service provider must document the self-assessment on forms provided by the Department;

(b) The service provider must develop and implement a plan of improvement based upon the findings of the self-evaluation; and

(c) The service provider must submit these documents to the local CMHP with a copy to the Department.

(5) Department Review. The Department must conduct a review of the service provider prior to the issuance of a certificate.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0040

Application for Initial Certificate and Certificate Renewal

(1) Form. The application must be on a form provided by the Department and must include all information requested by the Department.

(2) Initial Application. The applicant must identify the number and types of units of service that will be provided.

(3) Renewal application. To renew certification, the service provider must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal, no increase in the number of units of service shall be certified unless specifically approved by the Department.

(4) Renewal application extends expiration date. Filing of an application for renewal at least 30 days but not more than 120 days prior to the expiration date of the existing certificate extends the effective date until the Department or its designee takes action upon such application.

(5) Incomplete or incorrect information. Failure to disclose requested information on the application, or provision of incomplete or incorrect information on the application, may result in denial, revocation or refusal to renew the certificate

(6) Demonstrated capability. Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing the types of services identified in a manner consistent with the requirements of these rules.

(7) Separate certificates. Separate certificates are required when the service provider delivers services in multiple counties to the extent that contracts with each different county are required.

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

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0015, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0050

Reciprocal Compliance

(1) Acceptance of compliance with other standards. The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) Certificate based on compliance with other standards. An Employment or Alternative to Employment service seeking a Department Certificate based on compliance with other standard must:

(a) Provide the Department with a copy of the complete detailed report from the reviewing group; and

(b) Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules will take precedence.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0060

Certification Expiration, Termination of Operations, Certificate Return

(1) Expiration. Unless revoked or terminated earlier, each certificate to operate an employment or alternative to employment service will expire on the expiration date specified on the certificate.

(2) Termination of operation. If the director or director's designee of an employment or alternative to employment service discontinues operation of the certified service, the certificate terminates automatically.

(3) Return of Certificate. Each certificate in the possession of the service must be returned to the Department immediately upon suspension or revocation of the certificate, or when operation is discontinued by the holder of the certificate.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. &

ADMINISTRATIVE RULES

cert. ef. 1-31-97; Renumbered from 309-047-0025, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0070

Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) Notice of pending change in ownership, legal entity, legal status or management corporation. The program must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status or management corporation.

(2) New certificate required. A new certificate is required upon change in a program's ownership/legal entity or legal status. The program must submit a certificate application at least 30 days prior to change in ownership/legal entity or legal status.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0030, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0080

Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance, certificate renewal and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Inspections and investigations by the Department, its designee or proper authority. All inspections and investigations will be performed the Department, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by his rule must be:

- (a) Open to inspection and investigation by the Department, its designee or proper authority; and
- (b) Submitted to the Department within the time allotted.

(5) Priority investigation under (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee, has determined to initiate an investigation, the service provider must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
- (b) If the alleged victim is in danger or in need of immediate protective services; or
- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions will be taken.

(6) The Department or its designee must complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved and the available evidence does not support a final decision that there was reasonable cause to believe that either abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation by the Department, its designee, or a law enforcement agency, a service provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider(s). The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of Improvement. A plan of improvement must be submitted to the CMHP and the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0035, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0090

Alternative Methods, Variances

(1) Criteria for a variance. Variances may be granted to a service provider if the service provider lacks the resources needed to implement the standards required by chapter 411, division 345, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules or if there are other extenuating circumstances.

(2) Variance application. The service provider requesting a variance must submit in writing, an application to the CMHP that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and
- (d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(3) Community Mental Health Program Review. The CMHP must forward signed documentation to the Department within 30 days of the receipt of the request for variance indicating its position on the proposed variance.

(4) Department review. The Administrator for the Department or designee may approve or deny the request for a variance.

(5) Notification. The Department must notify the provider and the CMHP of the decision. This notice must be sent within 30 days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(6) Appeal application. Appeal of the denial of a variance request must be made in writing to the Administrator of the Department, whose decision is final.

(7) Duration of Variance. The duration of the variance must be determined by the Department.

(8) Written approval. The provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0040, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0100

Program Management

(1) Nondiscrimination. The service must comply with all applicable state and federal statutes, rules and regulations in regard to nondiscrimination in employment practices.

(2) Prohibition against retaliation. A community program or service provider must not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. 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, will be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. Adverse action means only those actions arising solely from the filing of an abuse report. 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 program, 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 program or the individual(s) served by the program.

(3) Documentation requirements. All entries required by this rule, unless stated otherwise, must:

- (a) Be prepared at the time, or immediately following the event being recorded;

ADMINISTRATIVE RULES

- (b) Be accurate and contain no willful falsifications;
 - (c) Be legible, dated and signed by the person(s) making the entry;
- and
- (d) Be maintained for no less than three years.

(4) Independence, productivity and integration. As stated in ORS 427.007 the service must have a written policy which states that each individual's Individual Support Plan is developed to meet each of the following:

- (a) Employment and activities which address each individual's level of independence;
 - (b) Employment and activities which address each individual's productivity; and
 - (c) Employment and activities which address each individual's integration into the local community.
- (5) Dissolution of service. Prior to the dissolution of a service, a representative of the governing body or owner must notify the Department in writing 30 days in advance and make appropriate arrangements for the transfer of individual records.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0045, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0110

Rights: General

(1) Abuse prohibited. Any adult as defined by OAR 411-345-0020(4) or any individual as defined by 411-345-0020(27) must not be abused nor will abuse be condoned by any employee, staff or volunteer of the program.

(2) Policies and procedures. The service must have and implement written policies and procedures that protect individuals' rights during the hours the individual is receiving services. The service must encourage and assist individuals to understand and exercise these rights. These policies and procedures must at a minimum provide for:

- (a) Assurance that each individual has the same civil and human rights accorded to other citizens;
- (b) Adherence to all applicable state and federal labor rules and regulations;
- (c) Opportunities for individuals to be productive;
- (d) Services that promote independence and that are appropriate to the age and preferences of the individual;
- (e) Confidentiality of personal information regarding the individual;
- (f) Adequate medical and health care, supportive services and training;
- (g) Opportunities for visits to legal and medical professionals when necessary;

(h) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(i) Personal property and fostering of personal control and freedom regarding that property;

(j) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical restraints

(k) Freedom from unauthorized personal restraints; and

(l) Transfer of individuals within a program follows OAR 411-345-0140(6).

(3) Notification of policies and procedures. The service must inform each individual and parent/guardian/advocate orally and in writing of its rights policy and procedures and a description of how to exercise them at entry to the service and, in a timely manner, as changes occur.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0120

Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules will be considered "providers" as defined in ORS 179.505(1) and 179.505 will be applicable.

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in those records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0055, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0130

Rights: Grievances

(1) Policies and procedures. The service must implement written policies and procedures for individuals' grievances. These policies and procedures must, at a minimum, provide for:

(a) Receipt of grievances from individual(s) or others acting on his/her behalf. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance must immediately report the issue to the program's director or designee and the CMHP;

(b) Investigation of the facts supporting or disproving the grievance;

(c) Taking appropriate actions on grievances within five working days following receipt of the grievance;

(d) Submission to the Program Director. If the grievance is not resolved it must be submitted to the Program Director for review. Such review must be completed and a written response provided within 15 days;

(e) Submission to the Community Mental Health Program. If the grievance is not resolved by the Program Director it may be submitted to the Community Mental Health Program for review. Such review must be completed and a written response provided within 30 days;

(f) Submission to the Administrator. If the grievance is not resolved by the Community Mental Health Program it may be submitted to the Administrator of the Department for review. Such review must be completed and a written response provided within 45 days of submission. The decision of the Administrator or designee is final;

(g) Documentation of each grievance and its resolution in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(2) Copies of all grievances to case manager. Copies of the documentation on all grievances must be sent by the service to the case manager within 15 working days of initial receipt of the grievance.

(3) Notification of policy and procedures. The service must inform each individual and parent/guardian/advocate orally and in writing at entry to the service and as changes occur of the service's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0140

Entry, Exit and Transfer: General

(1) Qualifications for Department funding. Unless the circumstances in 411-345-0140(1)(f) apply, all individuals considered for Department-funded services must:

(a) Be referred by the Community Mental Health Program;

(b) Be determined to have a developmental disability by the Department or its designee; Not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment or other forms of discrimination under applicable state or Federal law; Be 18 years of age or older; Be an individual also receiving residential services that are paid or regulated by the Department, excluding Semi-Independent Living Programs certified under OAR chapter 309, division 41, and including, but not limited to, services in:

(A) A Comprehensive Residential Service regulated by OAR chapter 411, division 325;

(B) An adult foster home regulated by OAR chapter 309, division 40;

(C) A Supported Living program regulated by OAR chapter 411, division 305; or

(D) An individual's own or family home when the individual receives Comprehensive In-Home Support services which are provided according to OAR chapter 411, division 330 and which cost over \$20,000 annually.

Individuals who meet the conditions of OAR 411-345-0140(1)(a) through (d), live in their own or family home, do not meet the conditions of 411-345-140(1)(e), and are enrolled in Employment or Alternative to Employment services as of June 30, 2003, may be eligible for Employment or Alternative to Employment services governed by these rules until the date designated by the Department for transfer to Support Services governed by OAR chapter 411, division 340.

(2) Information required for entry meeting. The service must acquire the following information prior to an entry ISP team meeting:

ADMINISTRATIVE RULES

(a) Written documentation that the individual has been determined to have a developmental disability;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device;

(c) A brief written history of any behavioral challenges;

(d) Documentation of the individual's current physical condition, including any physical limitations that would affect employment;

(e) Documentation of any guardian or conservator, or any other legal restriction on the rights of the individual, if applicable; and

(f) A copy of the most recent ISP, if applicable.

(3) Entry meeting. An entry ISP Team meeting must be conducted prior to the initiation of services to the individual. The findings of the entry meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting;

(c) The date determined to be the date of entry;

(d) Documentation of the participants at the meeting;

(e) Documentation as required by OAR 411-345-0190(4) and 411-345-0200;

(f) Documentation of the pre-entry information required by OAR 411-345-0140(2)(a-f);

(g) Documentation of the proposed transition plan as defined in the Community Developmental Disability Programs Chapter 411, Division 320 for services to be provided if the decision was made to serve;

(h) Documentation of the type of employment or alternative to employment service the individual will receive. This service must be one of the following:

(A) Supported employment;

(B) Community based service;

(C) Facility based services; or

(D) A combination of the above.

(i) Documentation of the decision to serve or not serve the individual requesting service, with reasons.

(4) Exit meeting. Each individual considered for exit must have a meeting by the ISP Team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service (unless the individual is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(5) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the service under the following conditions:

(a) The individual and his/her guardian requests an immediate removal from the service; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(6) Transfer decision. A decision to transfer an individual within a service provider may be made by the ISP team. Findings of the ISP team must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call(s);

(c) Documentation of the participants included in the meeting or telephone call(s);

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered, including transfer;

(f) Documentation of the reasons why any preferences of the individual, legal representative or family members cannot be honored;

(g) Documentation of a majority agreement of the participants regarding the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-047-0065, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0150

Entry, Exit and Transfer: Appeal Process

(1) Procedures. In cases where the individual and parent/guardian/advocate object to, or the ISP team cannot reach majority agreement regarding an admission refusal, a request to exit the program, or a transfer within a service, an appeal may be filed by any member of the ISP team.

(a) In the case of a refusal to admit, the unit of service must be held vacant and the payment for the service will continue.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services [similar to those] received prior to the appeal until the appeal is resolved.

(2) Appeal to the County. All appeals must be made in writing to the Community Mental Health Program Director or his/her designee for decision using the county's appeal process. The Community Mental Health Program Director or designee will make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(3) Appeal to the Department. The decision of the Community Mental Health Director may be appealed by the individual, his/her parent, guardian, advocate or the provider by notifying the Department in writing within ten working days of receipt of the county's decision.

(a) A committee must be appointed by the Administrator for the Department or the Administrator's designee every two years, and must be composed of a Department representative, an employment or alternative to employment service representative and a developmental disability case management representative.

(b) In case of a conflict of interest, as determined by the Administrator of the Department or designee, alternative representatives will be temporarily appointed by the Administrator or designee to the committee;

(c) The committee will review the appealed decision and make a written recommendation to the Administrator of the Department or designee within 45 working days of receipt of the notice of appeal;

(d) The Administrator of the Department or designee must make a decision on the appeal within ten working days after receipt of the recommendation from the committee; and

(e) If the decision is for admission or continued placement and the service refuses admission or continued placement, the funding for that unit of service may be withdrawn by the contractor.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0070, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0160

Rights: Plan

Individual support plan available. A copy of each individual's Individual Support Plan must be available at the service within 60 days of entry and updated at least annually or as changes occur.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0075, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0170

Rights: Behavior Intervention

(1) Written policy. The service must have and implement a written policy concerning behavior intervention procedures. The service must inform the individual and his/her legal guardian of the behavior intervention policy and procedures at the time of entry and as changes occur.

(2) Implementation of a program to alter an individual's behaviors. A decision to implement a program to alter an individual's behavior must be made by the ISP team and the program must be described fully in the individual's ISP. The program must:

(a) Emphasize the development of the functional alternative behavior and positive approaches and positive behavior intervention;

(b) Use the least intervention possible;

(c) Ensure that abusive or demeaning intervention must never be used; and

(d) Be evaluated by the service provider through timely review of specific data on the progress and effectiveness of the procedures.

(3) Documentation requirements. Documentation regarding the behavior program must include:

(a) Documentation that the individual, the guardian, and ISP team are fully aware of and consent to the program in accordance with the ISP process as defined in the Community Developmental Disability Programs Rule OAR chapter 411, division 320;

(b) Documentation of all prior programs used to develop an alternative behavior; and

ADMINISTRATIVE RULES

(c) A written record of a functional analysis of the behavior which is defined as:

(A) A clear, measurable description of the behavior to include frequency, duration, intensity and severity of the behavior;

(B) A clear description of the need to alter the behavior;

(C) An assessment of the meaning of the behavior, which includes the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of medical conditions;

(iii) The result of environmental causes; or

(iv) The result of other factors.

(d) A description of the conditions which precede the behavior in question;

(e) A description of what appears to reinforce and maintain the behavior; and

(f) A clear and measurable procedure which will be used to alter the behavior and develop the functional alternative behavior.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0080, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0180

Rights: Physical Restraints

(1) Circumstances when physical restraint allowed. The service must only employ physical restraint:

(a) As part of an Individual Support Plan that may be prescribed by a physician and meets the requirements of OAR 411-345-0170;

(b) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection prescribed by a physician, but only if absolutely necessary for individual protection during the time that a medical condition exists.

(2) Staff training. Staff members who reasonably anticipate needing to apply restraint as part of an individual's ongoing training program must be trained by a Department-approved trainer. Documentation verifying such training must be maintained in his/her personnel file.

(3) Physical restraints in emergency situations. Physical restraints in emergency situations must:

(a) Be authorized by the program's director or designee, or physician;

(b) Be authorized within one hour of application of restraint or within one hour of the beginning of the next working day;

(c) Result in the immediate notification of the individual's case manager;

(d) Be used only until the individual is calm; and

(e) Prompt an ISP meeting if used more than three times in a six month period.

(4) Avoid physical injury. Physical restraint must be designed to avoid physical injury to the individual and to minimize physical discomfort.

(5) Incident report. All use of physical restraint must be documented in an incident report. The report must include:

(a) The name of the individual to whom the restraint was applied;

(b) The date, type and length of time, of restraint application;

(c) The name and position of the person authorizing the use of the restraint;

(d) The name of the staff member(s) applying the restraint; and

(e) Description of the incident.

(6) Copy to CMHP. A copy of the incident report must be forwarded within five working days of the incident to the Community Mental Health Program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0085, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0190

Health and Safety: Medical Services

(1) Confidentiality. All individuals' records must be kept confidential as described in OAR411-345-0120(1).

(2) Written policies and procedures. The service must have and implement written policies and procedures which describe the medical management system including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individual care. Individuals must receive care that promotes their health and well being, as follows:

(a) The service must observe the health and physical condition of individuals and take action in a timely manner in response to identified changes in condition that could lead to deterioration or harm;

(b) The service must assist individuals with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service must share information regarding medical conditions with the individual's residential provider, if any, and case manager, with the individual's knowledge; and

(d) The service must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) Documentation. The service must maintain records on each individual to aid physicians, medical professionals and the service in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits staff and medical persons to follow easily the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to the program that includes, where available:

(A) A copy of a record of immunizations;

(B) The status of Hepatitis B screening; and

(C) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition which includes:

(A) A copy of all current orders for medication administered at the program site;

(B) A list of all current medications;

(C) A record of visits to medical professionals, consultants or therapists if facilitated or provided by the service.

(5) Written physician's order. The administration of medication at the employment or alternative to employment site must be avoided whenever possible. When medications, treatments or special diets must be administered or monitored for self-administration, the service must:

(a) Obtain a copy of a written order, signed by a physician or physician's designee, prescribing the medication or other medical service; and

(b) Follow written orders.

(6) PRN/Psychotropic medication prohibited. PRN orders must not be accepted for psychotropic medication.

(7) Requirement for medications. All medications administered or monitored in the case of self-administration must be:

(a) Properly labeled as specified per physician written order;

(b) Kept secured, unavailable to any other individual and stored as prescribed; and

(c) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) Medication Administration Record (MAR) requirements. The MAR shall include:

(a) The name of the individual;

(b) The brand name and/or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(c) Times and dates the administration or self-administration of the medication occurs

(d) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(e) Method of administration;

(f) Documentation of any known allergies or adverse reactions to a medication;

(g) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(h) An explanation of any medication administration irregularity with documentation of administrative review by the service's executive director or designee.

(9) Adverse effects safeguards. Safeguards to prevent adverse medication reactions shall be utilized that include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness or effects to the residential provider and/or Case Manager; and

(c) Prohibiting the use of one individual's medications by another.

(10) Unused, discontinued, outdated, or recalled drugs and drug containers. No unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible or missing labels may be kept at the employment or alternative to employment service. All unused, discontinued, outdated, or recalled drugs and drug containers with worn, illegible or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the

ADMINISTRATIVE RULES

possession of people other than for whom it was prescribed. A written record must be maintained by the service provider of all disposed drugs and must include:

- (a) Date of disposal;
- (b) A description of the medication, including amount
- (c) The individual for whom the medication was prescribed
- (d) The reason for disposal;
- (e) The method of disposal; and
- (f) Signature of staff disposing.

(11) Self-administration of medication. For any individual who is self-administering medication the service must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) Self-administration medications kept secured. The service provider must ensure that individuals able to self-administer medications keep them secured, unavailable to any other person and stored as prescribed.

(13) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the service, the case manager must be notified immediately. The ISP team will determine alternative placement or arrangement if necessary.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0200

Health and Safety: Individual Summary Sheets

Current one to two page record. A current one to two page record must be maintained at the service's primary place of business for each individual receiving services. The record must include:

(1) The individual's name, current address, home phone number, date of entry into the program, date of birth, sex, social security number, social security beneficiary account number, preferred hospital, AFS number where applicable, guardianship status; and

(2) The name, address and telephone number of:

(a) The individual's legal representative, spouse, family, advocate and/or other designated contact person;

(b) The individual's preferred physician, secondary physician and/or clinic;

(c) The individual's preferred dentist for emergency use;

(d) The individual's case manager;

(e) Other agencies and representatives providing services to the individual; and

(f) The individual's employment/alternative to employment site(s) if different from the service's primary place of business.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0095, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0210

Health and Safety: Personnel

(1) Basic Personnel Policy and Procedure. The service must have in place personnel policies and procedures that address suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation. The program must also have in place personnel policies and procedures which address disciplinary and termination of employment when the allegation of abuse has been substantiated.

(2) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CMHP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided

with a Department-produced card regarding abuse reporting status and abuse reporting.

(3) Director qualifications. The service must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in the developmental disabilities, social services/mental health or related field or six years of experience, including supervision, in the field of developmental disabilities or a social services/mental health field.

(4) Staff qualifications. Any staff who supervise individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description which he/she has signed and dated.

(5) Personnel files and qualifications records. The service must maintain a personnel file on each staff person. In addition, the program must maintain the following on each staff person in a file available to the Department or its designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training;

(c) CPR and first-aid certification obtained from a recognized training agency within three months of employment and kept current if needed to meet the staffing requirements as described in OAR 411-345-0220(1)(b)(A) and (B);

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of employee notification of mandatory abuse reporting status;

(f) Written documentation of any substantiated abuse allegations; and

(g) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0100, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0220

Health and Safety: Staffing Requirements

(1) General staffing requirements. Each employment/alternative to employment service must provide direct service staff appropriate to the number and level of individuals served, as follows:

(a) Supported employment and community based services must provide adequate direct service staff to ensure initial program and site development, training and ongoing support to ensure that individual's basic health, safety and rights are met. Individuals receiving services through supported employment or community based sites must be contacted in person by a staff member a minimum of two times per month.

(b) Facility based services must provide adequate direct service staff to ensure that individual's basic health, safety and rights are met. When individuals are present the service must provide and document that there are staff trained in the following areas:

(A) At least one staff member on duty with CPR certification at all times;

(B) At least one staff member on duty with current First Aid certification at all times;

(C) At least one staff member on duty with training to meet other specific medical need(s) as determined through the ISP process; and

(D) At least one staff member on duty with training to meet other specific behavior intervention need(s) as determined through the ISP process.

(2) Contract requirements for direct service staff ratios. Each service must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0105, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0230

Health and Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. Such description must include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression or unusual incident.

ADMINISTRATIVE RULES

(2) Sent to case manager. Copies of all unusual incident (as defined by 411 345-0020(47) reports must be sent to the case manager within five working days of the incident.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CMHP immediately of an incident or allegation of abuse falling within the scope of 411-345-0020(1)(a) through (j). When an abuse investigation has been initiated, the CMHP must ensure that either the case manager or the program will also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification. In the case of an unusual incident requiring emergency response, the service must immediately notify:

(a) The individual's legal guardian or conservator, parent, next of kin, designated contact person and other significant person;

(b) The Community Mental Health Program;

(c) The individual's residential provider, if applicable; and

(d) Any other agency responsible for the individual.

(5) Missing person notification. In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service must immediately notify:

(a) The individual's designated contact person;

(b) The individual's guardian, if any, or nearest responsible relative;

(c) The individual's residential provider, if applicable;

(d) The local police department; and

(e) The Community Mental Health Program.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0110, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0240

Health and Safety: Emergency Plan

(1) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(2) Posting of emergency information: Facility Based Services.

(a) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephone(s); and

(b) The telephone numbers of the Director, and other persons to be contacted in case of emergency must be posted by designated telephone(s).

(3) Emergency information: Community Based Service.

(a) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephone(s); and

(b) The telephone numbers of the Director, emergency physician and other persons to be contacted in case of emergency must be made available to the service site personnel department or responsible supervisor.

(4) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the service provider for three years.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0115, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0250

Health and Safety: Evacuation Drills

(1) Training. The service must train all individuals immediately upon entry to the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(2) Drill requirements for Facility Based Services. Each service must conduct an unannounced evacuation drill each month when individuals are present;

(a) Exit routes must vary based on the location of a simulated fire.

(b) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training and support in evacuation procedures. The training must be included in the individual's ISP.

(c) Written documentation must be made at the time of the drill and kept by the program for at least two years following the drill. It must include:

(A) The date and time of the drill;

(B) The location of the simulated fire;

(C) The last names of all individuals and staff present in the service area at the time of the drill;

(D) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(E) The signature of the staff conducting the drill.

(3) Drill requirements for individuals who are medically fragile or have severe physical limitations. In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(a) Be developed with the local fire authority, case manager, and the service provider designee; and

(b) Be presented as a variance request per OAR 411-345-0090(2)(a) through (d).

(4) Adaptations required for sensory or physically impaired. The service must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0120, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0260

Health and Safety: Physical Environment

(1) Health and Safety Inspections: Community Based Services. All supported employment and community based services must ensure that the site has no known health or safety hazards in its immediate environment and that individuals are trained to avoid recognizable hazards.

(2) Health and Safety Inspections: Owned, leased, or rented buildings and property. The service must assure that at least once every three years health and safety inspection(s) will be conducted.

(a) The inspection(s) must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(b) The inspection(s) may be performed by:

(A) Oregon Occupational Safety and Health Division;

(B) The service's workers compensation insurance carrier; or

(C) An appropriate expert such as a licensed safety engineer or consultant as approved the Department; and

(D) The Oregon Health Department, when necessary.

(c) The inspection(s) must cover:

(A) Hazardous material handling and storage;

(B) Machinery and equipment used by the service;

(C) Safety equipment;

(D) Physical environment; and

(E) Food handling, when necessary.

(d) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(3) Health and Safety: Fire and Life Safety Inspections for Owned, Leased, or Rented Buildings and Property. The service provider must ensure that each service site has annual fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0125, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0270

Health and Safety: Vehicles and Drivers

(1) Vehicles operated to transport individuals. Services that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain insurance coverage; and

(d) Carry in vehicles a fire extinguisher and first-aid kit.

(2) Drivers. Drivers operating vehicles to transport individuals must meet applicable Department of Motor Vehicles requirements.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0130, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

ADMINISTRATIVE RULES

411-345-0280

Individual/Family Involvement

Policy Needed. The program must have and implement a written policy that addresses:

- (1) Opportunities for the individual to participate in decisions regarding the operations of the program;
- (2) Opportunities for families, guardians, and significant others of the individuals served by the program to interact; or
- (3) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the program or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0133, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0290

Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Conditions. The Department may deny, revoke or refuse to renew a certificate when it finds the provider, or any person holding five percent or greater financial interest in the provider:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance; or

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an onsite review of the service site by the Department for the purpose of investigation or certification); or

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire; or

(d) Has been convicted of a felony; or

(e) Has been convicted of a misdemeanor associated with the operation of an employment and alternative to employment service; or

(f) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, employment and alternative to employment program finances or individuals' funds; or

(g) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare.

(2) Immediate suspension of certificate. In any case where the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Department may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Department will provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Department will provide the opportunity for a hearing pursuant to OAR 411-345-0300.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0135, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

411-345-0300

Hearings

(1) Hearing Rights. An applicant for a certificate, or a certificate holder, upon written notice from the Department of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS chapter 183.

(2) Request for hearing. Upon written notification by the Department of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-345-0300(1) the applicant/certified program will be entitled to a hearing in accordance with ORS chapter 183 within 60 days of receipt of notice. The request for hearing must include an admission or denial of each factual matter alleged by the Department and must affirmatively allege a short plain

statement of each relevant affirmative defense the applicant/certified program may have.

(3) Hearing rights under OAR 411-345-0290(2). In the event of a suspension of a certificate pursuant to 411-345-0290(2) and during the first 30 days after the suspension of a certificate, the certified program will be entitled to a fair hearing within 10 days after its written request to the Department for a hearing regarding certificate suspension. Any hearing requested after the end of the 30 day period following certificate suspension will be treated as a request for hearing under OAR 411-345-0300(2).

(4) Issue at hearing on denial or revocation pursuant to OAR 411-345-0290(1)(a). The issue at a hearing on certification denial, revocation or refusal to renew a certificate pursuant to 411-345-0290(1)(a) is limited to whether the service was/is in compliance at the end of the 30 calendar days following written notice of non-compliance.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0140, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03

Adm. Order No.: SPD 24-2003

Filed with Sec. of State: 12-29-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 411-320-0010, 411-320-0020, 411-320-0030, 411-320-0040, 411-320-0050, 411-320-0060, 411-320-0070, 411-320-0080, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0140, 411-320-0150, 411-320-0160, 411-320-0170, 411-320-0180, 411-320-0190, 411-320-0200

Subject: These rulemaking actions implement permanent adoption of Community Development Disability Programs rules. These amendments are taken to: a) consolidate current rules governing the operation of community developmental disability services; b) incorporate requirements for services funded in previous biennia such as regional crisis services, quality assurance activities and relations with Support Services Brokerages; c) clarify services coordinator and support specialist roles and responsibilities in light of new Medicaid Waiver for Support Services for adults with developmental disabilities and the Staley Lawsuit Settlement Agreement; d) implement changes relating to individual support plans for individuals receiving comprehensive services; e) eliminate requirements regarding priority population and changes to a requirement for monitoring based on need and living situation; and f) incorporate quality assurance systems provided for in Oregon's response to the CMS Regional Protocol for Review of Home and Community Based Waiver.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-320-0010

Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe general administrative standards for operation of a Community Developmental Disability Program (CDDP) operated by or on behalf of a Local Mental Health Authority (LMHA).

(a) All Community Developmental Disability Program (CDDP) contractors providing developmental disability services under a contract with the Department of Human Services are required to meet the basic management, programmatic, health, safety and human rights regulations in the management of the community service system for individuals with developmental disabilities.

(b) This rule also prescribes the standards by which the Department approves services operated by the CDDP including, but not limited to case management and crisis/diversion services.

(2) Statutory authority. These rules are authorized by ORS 410.070 and 409.050 and carry out the provisions of 430.610 to 430.670 and 427.005 to 427.007.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0020

Definitions

(1) "24-Hour residential program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

ADMINISTRATIVE RULES

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748, 418.749 184.805 and includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites, which are deliberately inflicted;

(C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including; but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message which is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an adult. Except for those additional circumstances listed in OAR 411-320-0020(1)(c)(A-F) abuse of an adult 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 caused 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; or

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(c) Abuse in contracted or purchased services. When the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes is but not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate, unauthorized restraint resulting in injury.

(i) A restraint is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without ISP team approval, identified on the ISP and is described in formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to: an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other

titles for personal property without approval of the individual or the person's legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.

(3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(4) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated

(7) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(8) "Care" means supportive services, including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(9) "Chemical restraints" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior or treatment plan.

(10) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(11) "Choice" means the individual's expression of preference, as well as the opportunity for and an active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated through verbal, sign language, or other communication methods.

(12) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(13) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(14) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) which operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a County Financial Assistance Contract with the Department of Human Services.

(15) "Complaint" means an allegation of abuse of an individual; a grievance against a CDDP or CDDP subcontractor's contract, policies or procedures; or other significant problem or dissatisfaction with the CDDP or CDDP subcontractor that could impact individual(s) health and safety, or significantly impact community relations with the CDDP or the CDDP subcontractor.

(16) "Complaint investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, Oregon administrative rule or policy that is not covered by an abuse investigation or a grievance procedure.

(17) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department: a 24-hour program, a foster home, a supported living program or comprehensive in-home supports for adults in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services (with an annual plan for less than \$20,000. or Children's Intensive In-Home Services.

(18) "Crisis" means a situation, as determined by a qualified services coordinator, that could result in civil court commitment under ORS.427 and

ADMINISTRATIVE RULES

imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no alternative resources available.

(19) "Crisis or Diversion Services" means a short-term service(s) for up to 90 days provided to, or on behalf of, an adult to prevent civil court commitment under ORS 427, or a child to prevent out-of-home placement.

(20) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department, that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(21) "Developmental disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(22) "Developmental disability for children five years and younger" means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, "is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-320-0020(21).

(23) "Developmental disability for children six years and older" is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

(24) "Entry" means admission to a Department funded developmental disability service provider.

(25) "Exit" means either termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(26) "Grievance" means a formal complaint by the individual or a person acting on his or her behalf about any aspect of the program or an employee of the program.

(27) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(28) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession and includes a health care facility.

(29) "Health care representative" means:

(a) A health care representative as defined in ORS 127.505(12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.

(30) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(31) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(32) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator or support specialist.

(33) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(34) "Individualized Education Plan" or "IEP" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student and a representative of the school district.

(35) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian, if any, relatives of the individual, the services coordinator and any other persons who are well liked by the individual and requested by the individual to serve on the team.

(36) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community. See ORS 427.005.)

(37) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(38) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(39) "Long Term Diversion Services" means new or enhanced services provided to an individual who is eligible for crisis/diversion services and is needed on a long-term or on-going basis to resolve the crisis.

(40) "Majority agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Representatives from service provider(s), families, the CDDP, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(41) "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 an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. 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 40.295.

(42) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(43) "Mechanical restraints" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.

(44) "Monitoring" means the periodic review of the implementation of services identified in the annual service plan or annual summary, and the quality of services delivered by other organizations.

(45) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach, which includes methods of effective evasion, deflection and escape from holding.

(46) "Physical intervention" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

ADMINISTRATIVE RULES

(47) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(48) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property and funds as possible.

(49) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual to prevent self-destructive acts and safeguard an individual's person, property, and funds as soon as possible.

(50) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(51) "Regional Crisis/Diversion Program" means the regional coordination of the management of crisis/diversion services for a group of designated counties.

(52) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(53) "Restraint" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(54) "Services coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with services coordinator.

(55) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider" or "program" is synonymous with "service provider."

(56) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(57) "Support specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of resources for individuals with developmental disabilities served by a Support Services Brokerage. The term Title XIX specialist maybe synonymous with support specialist.

(58) "Transfer" means movement of an individual from a service site to another within a county, administered by the same service provider and which has not been addressed within the ISP.

(59) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(60) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(61) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the CDDP.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0030

Organization and Program Management

(1) Organization and internal management. Each provider of community developmental disability services funded by the Department must have

written standards governing the operation and management of the program. Such standards must be up to date, available upon request and include:

(a) Organization chart. An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and for the components and staff within the agency;

(b) Position descriptions. Position descriptions for all staff providing community developmental disability services;

(c) Personnel requirements. Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff or volunteer of the CDDP is prohibited and is not condoned or tolerated);

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Department.

(2) Management plan. The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions will be implemented.

(3) Qualified staff. Qualified staff must provide developmental disability services. These staff must maintain and enhance their knowledge and skills, through participation in education and training programs. Staff delivering these services must be organized under the leadership of a designated Developmental Disability Program Manager and receive clerical support services sufficient to perform their required duties. Have an approved Criminal History Record Check in accordance with ORS 181.536 through 181.537.

(a) Program management for developmental disability services.

(A) Program Manager. The local mental health authority (LMHA) or the public or private corporation operating the community developmental disability services program must designate a full-time employee who will, on at least a part-time basis, be responsible for management of developmental disability services.

(B) Program Manager Qualifications. The program manager for developmental disability services must meet the following qualifications for employment:

(i) Hold at least a bachelor's degree in a behavioral, social, health science, special education, public administration, or human service administration; and have a minimum of four years experience, with at least two of those in developmental disability services, that provided recent experience in program management, fiscal management and staff supervision.

(ii) On an exceptional basis, the CDDP may hire an individual who does not meet these program manager qualifications if the county and the Department have mutually agreed on a training and technical assistance plan which assures that the individual will quickly acquire all needed skills and experience.

(iii) When the position of program manager for developmental disability services becomes vacant, an interim program manager must be appointed to serve until a permanent program manager is appointed. The community mental health and developmental disability services program must request a variance as provided in these rules if the individual(s) appointed interim program manager do not meet the qualifications and the term of the appointment(s) total more than 180 days.

(C) Management functions. In addition to other duties as may be assigned in the area of developmental disability service, the Community Developmental Disability Program (CDDP) must, at a minimum, assure the following duties are performed:

(i) Develop and assure implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve people with developmental disabilities;

(ii) Develop and assure maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Department and other state and local agencies with an interest in developmental disability services;

(iii) Develop and assure implementation of programs funded by the Department to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state and federal requirements;

ADMINISTRATIVE RULES

(iv) Assure collection and timely reporting of information as may be needed to conduct business with the Department, including but not limited to information needed to license foster homes, to collect federal funds supporting services and to investigate complaints related to services or suspected client abuse; and

(v) Develop and assure use of procedures that attempt to resolve complaints and grievances involving individuals or organizations that are associated with developmental disability services.

(b) Staff. Each CDDP must provide a qualified services coordinator or support specialist as required by this rule. These roles may be fulfilled by the same person.

(A) Qualifications. A person employed as a services coordinator or as a support specialist must have at least:

(i) A bachelor's degree and two years work experience in human services; or

(ii) Five years of equivalent training and work experience; and

(iii) Knowledge of the public service system for developmental disability services in Oregon.

(B) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in 411-320-0030(4)(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 a services coordinator or a support specialist the CDDP 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.

(iv) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(C) Services coordinator responsibilities. The duties specified in the employee's job description must, at a minimum, include the following:

(i) Deliver case management services as listed in OAR 411-320-0090(4)(a-u) to individuals with developmental disabilities;

(ii) Assist the program manager in monitoring the quality of services delivered within the county; and

(iii) Assist the program manager in the identification of existing and insufficient service delivery resources or options.

(D) Support specialist responsibilities. The duties specified in the employer's job description will, at a minimum, include the following:

(i) Authorizing individual support plans of individuals enrolled in Support Services Brokerages for adults with developmental disabilities and

(ii) Ensuring that requirements of for Support Services in the Title XIX Waiver are met, including providing notice of hearing rights and completing an annual waiver review,

(iii) Determining eligibility for and providing assistance in accessing crisis/diversion services;

(iv) Receiving and investigating complaints of abuse or neglect, as well as insuring the provision of protective services; and

(v) Facilitating transfers to another county or into comprehensive services.

(4) Staff training. Services Coordinators and support service specialists must participate in a basic training sequence. The Department provides training materials; and the provision of training may be conducted by the Department or CDDP staff, depending on available resources. This training is not a substitute for the normal procedural orientation that would occur for a new services coordinator or support specialist support specialist that must be provided by the CDDP.

(a) Orientation. New services coordinator or support service specialist orientation provided by the CDDP must include:

(A) An overview of DD services and related human services within the county;

(B) An overview of the Department rule(s) governing the CDDP,

(C) An overview of the Department's licensing and certification rules for service providers,

(D) An overview of the Client Process Monitoring System (CPMS) or any subsequent replacement system;

(E) A review and orientation to Medicaid, social security income (SSI), social security benefits (SSA) or (SSDI), Home and Community Based Waiver Services, the Oregon Health Plan; and

(F) A review (prior to having contact with service recipients) of the services coordinator's or support specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors and children.

(b) Minimum annual training. Each services coordinator must be required to participate in a minimum of 20 hours per year of additional Department sponsored or other training in the area of developmental disabilities;

(c) Mandated training. The DD Program Manager will assure the attendance of the services coordinators, support specialist support specialists or quality assurance staff at Department mandated training.

(d) Training documentation. The CDDP must keep documentation of required training in the personnel files of the services coordinator, the support specialist support specialist and in the general files of the CDDP.

(5) Advisory committee. Each CDDP must have an advisory committee.

(a) The committee must meet at least quarterly.

(b) The membership of the committee will be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional and consumer interests represented. Membership must include advocates for individuals with mental retardation or other developmental disabilities as well as individuals with disabilities and their families.

(c) The Advisory Committee will advise the LMHA, the community mental health and developmental disability program director and the developmental disability program manager on community needs and priorities for services and will assist in planning and in review and evaluation of services.

(d) The Advisory Committee may function as the must disability issues advisory committee as described in ORS 430.625 if so designated by the local mental health authority.

(6) Needs assessment, planning & coordination. Upon request of the Department the CDDP must assess local needs for services to individuals with mental retardation or other developmental disabilities and must submit planning and assessment information to the Department.

(7) Contracts:

(a) Contract required. If the CDDP (or any of its component service element, as described in the Department contract with the LMHA) is not operated by the LMHA there must be a contract between the LMHA and the organization operating the CDDP or the component service elements. The contract must specify the authorities and responsibilities of each party and conform to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) Provider selection. The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers, if the service provider is selected by the individual, the individual's family or the individual's guardian or legal representative.

(A) The service provider selected must also meet Department certification or licensing requirements to provide the type of service to be contracted. This is in keeping with the principles of family support expressed in ORS 417.342 and notwithstanding 430.670(2) or 291.047(3).

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) Model contract. When a CDDP contracts with a public agency or private corporation for delivery of developmental disability service element, the CDDP will include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection, that are nonessential to the service element(s) being provided under the contract. The CDDP must specify in contracts with service providers that disputes, which arise from these limitations, must be resolved according to procedures contained in OAR 411-320-0170 (2)(a)A-B. For purposes of this section i.e., 411-320-0030(7)(a-f) (8), the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Department as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the service element(s) being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

ADMINISTRATIVE RULES

(d) Local option. The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option, as it would appear in the contract. It must include the date upon which the local option would become effective and a complete written description of how the local option would improve client independence, productivity, or integration; or how it would improve the protection of client health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option will impact client services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Administrator for SPD or his/her designee that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) The Department has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) Exception to limit on contract requirements for facilities. The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which client care is provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) Contract dispute resolution. The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Department and contracted through the CDDP. Procedures implementing this policy must be included in the contract with any such service provider.

(8) Financial Management

(a) Financial records. There must be up-to-date accounting records for each developmental disability service element accurately reflecting all revenue by source, all expenses by object of expense and all assets, liabilities and equities, consistent with generally accepted accounting principles and conforming to the requirements of OAR 309-013-0020 (Audit Guidelines) or any successor rules.

(b) Fraud & embezzlement. There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX. Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service charged by the service element.

(9) Policies and Procedures. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, OAR 411-320-0010 through 0200 and other applicable standards and rules.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0040

Community Developmental Disability Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

(1) Access to services:

(a) Nondiscrimination. In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), community mental health and developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin or duration of residence. Community developmental disability contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4(d), which states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance"

(b) Acceptance of eligibility. Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services provided unless admission to the service is subject to diagnostic or disability category or age restrictions based on predetermined criteria or contract limitations.

(2) Coordination of community services. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the community mental health and developmental disability program, other local and state human service agencies and any other service providers as appropriate for the needs of the individual.

(3) Case management services. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals that are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of residence must be responsible for case management services unless otherwise negotiated.

(d) Case management services, require an impartial point of view to fulfill the necessary functions of planning, procuring monitoring as well as investigating. Except as allowed under subsection 411-320-0040(3)(e), the case management program will be provided under an organizational structure that separates case management from other direct services for individuals with developmental disabilities. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

(A) When the CDDP coordinates the delivery of Child and Family Support Services for children, under 18 years old, living at home with their family or Comprehensive In-Home Supports for adults.

(B) When the CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) Exception. If a CDDP intends to perform a direct service, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP will provide Child and Family Support Services or Comprehensive In-Home Supports described in OAR 411-320-0050(3)(e)(A) above. If the CDDP does not provide one or both of these services they must propose a variance to the Department for approval describing how those services will be provided.

(B) If the circumstance described in OAR 411-320-0050(3)(e)(B) above exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e)(C) above exists, the organization must propose a variance to the Department for prior approval including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e), it must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in OAR 411-320-0040(3)(g), the CDDP must, submit a written variance for prior approval by the Department that describes how conflict of roles will be managed within the CDDP.

ADMINISTRATIVE RULES

(4) Family support. The CDDP must ensure the availability of a program for Child and Family Support Services in accordance with OAR 309-041-2000 through 2180 or any successor rules.

(5) Title XIX administration. The CDDP must ensure the availability of staff to provide the required administrative review of program services funded by the Medicaid waiver(s). This must include the availability of support specialists as described in OAR 411-320-0030(3)(b)(A-B)&(D).

(a) If an individual is receiving services in more than one county, the county of residence must provide the services of a support specialist unless otherwise negotiated.

(b) If a CDDP also operates a Support Services Brokerage the CDDP must submit a variance in writing for prior approval to the Department including the mechanism for addressing potential conflicts of interest.

(6) Abuse and protective services. The CDDP must assure that abuse investigations for adults are conducted according to statute and administrative rules by trained staff. Any suspected or observed abuse of children should be reported directly to the Child Welfare child protective services unit and local law enforcement, when appropriate.

(7) Foster homes. The CDDP will recruit foster home applicants and maintain forms and procedures necessary to license or certify homes. This will include copies of the following records:

(A) Initial and renewal applications to be a foster home;

(B) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(C) General facility information;

(D) Documentation of references, classification information, credit check, if necessary, criminal history clearance and training for provider and substitute caregivers.

(E) Documentation of foster care exams for adult foster home care givers;

(F) Correspondence;

(G) Any meeting notes;

(H) Financial records;

(I) Annual agreement or contract;

(J) Legal notices and final orders for rule violations, conditions, denial or revocation (if any); and.

(K) Copies of the annual license or certificate.

(8) Contract monitoring. The CDDP will monitor all community developmental disability subcontractors to assure that:

(a) Service element services are provided as specified in the contract with Department; and

(b) Service elements are in compliance with these rules and other applicable Department administrative rules.

(9) Local quality assurance program. Each CDDP must implement and maintain a local quality assurance system in accordance with these rules.

(a) QA system purpose and scope. The local quality assurance system will:

(A) Ensure the development and implementation of a quality assurance system by:

(i) Providing direct support to DHS in implementation of its quality assurance (QA) plan; and

(ii) Generally improving the quality of services by evaluating service delivery and outcomes and adjusting local planning and performance where needed.

(B) Include all Department funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities; and those developmental disability services operating under a direct contract with the Department; and

(C) Include, at a minimum, the quality indicators and all activities that are to be carried out at the local level according to the most recent edition of the Department's Quality Assurance Plan for Developmental Disability Services (Department's QA Plan).

(b) Quality assurance activities. The CDDP will perform quality assurance activities that include, but are not limited to, the following:

(A) Develop and maintain a local QA plan that describes the major activities to be performed by the CDDP, including the timelines for each of those activities.

(i) These activities must include all activities that are to be carried out at the local level according to the most current edition of the Department's QA plan.

(ii) The local QA plan must be updated whenever changes are made, but at least annually.

(B) Develop CDDP policies and procedures needed to implement the local QA plan.

(C) Implement the activities defined in the local QA plan, including the timely delivery of data and information to the Department as required in the Department's QA plan.

(D) Maintain data and information that has been gathered through implementation of the local QA plan.

(E) Maintain a record of conclusions and recommendations that have been drawn from analysis of the information gathered.

(F) Take management actions as needed to improve service quality or to correct deficiencies; and

(G) Maintain records that document:

(i) The CDDP's performance of the activities described in the local QA plan.

(ii) The CDDP's performance measured against statewide performance requirements as specified in the Department's QA Plan.

(iii) The CDDP's findings, corrective actions and the impact of its corrective actions which have been reviewed at a policy level within the CDDP's department structure within the County; and

(iv) The timely submission of information to the Department, as required in the Department's QA Plan.

(c) Performance requirements. The CDDP will meet or exceed the minimum performance requirements established for all CDDP's in the Department's QA Plan.

(A) The CDDP will collect and analyze information concerning performance of the activities represented in OAR 411-0320-0040(9)(a)(A), in the manner specified in the Department's QA Plan.

(B) Data concerning the CDDP's performance will be sent to the Department in the format and within the timelines established by the Department.

(C) The CDDP must cooperate in all reviews, by the Department or its designee, of CDDP performance in accordance with these rules.

(D) Records that document the CDDP's performance will be maintained and be made available to the Department or its designee, for audit purposes, upon request.

(d) Corrective actions. The CDDP will act to correct deficiencies and poor performance through management actions.

(A.) Deficiencies and substandard performance found in services that are operated or subcontracted by the county will be resolved through direct action by the CDDP.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts will be resolved through collaboration with the Department.

(C) Deficiencies and substandard performance found in services provided through a Region will be resolved through collaboration between the regional management entity and the affected CDDPs.

(e) Local quality assurance committee. The CDDP will utilize a committee of stakeholders to assist in the development and review of local quality assurance plans and activities.

(A) Committee membership will include persons representing self-advocates, service providers, advocates, family members of individuals with developmental disabilities and services coordinators.

(B) Activities of the committee will include:

(i) Providing review and comment on CDDP plans for local QA plan activities.

(ii) Providing review and comment on data gathering instruments and methods; and

(iii) Providing review and comment on the results of information gathered by the CDDP and the effectiveness of corrective actions.

(f) Quality assurance resources. The CDDP must allocate resources to implement the local QA plan.

(A) Individuals employed to carry out implementation activities will have the training and education, as well as the rank or classification within the organization, that is appropriate for the tasks assigned.

(B) One position within the CDDP will be designated as the QA Coordinator. The minimum requirements must include:

(i) The QA Coordinator must be a full time CDDP employee, unless prior approval of an alternative plan has been obtained from the Department.

(ii) At a minimum the position must meet the qualifications for a services coordinator for individual with developmental disabilities as described in OAR 411-320-0030(3)(b)(A)(i-iv).

(iii) The purpose of the QA Coordinator is to facilitate the CDDP's quality assurance process through activities such as the following:

(I) Participate in Department sponsored activities such as planning and training that are intended to assist in development and implementation of Department's QA plan requirements, compliance monitoring procedures, corrective action plans and other similar activities.

ADMINISTRATIVE RULES

(II) Draft local quality assurance plans and procedures that both meet QA requirements established by the Department and consider the unique organizational structure, policies and procedures of the CDDP.

(III) Keep CDDP administrative staff informed concerning new or changing requirements being considered by the Department.

(IV) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.

(V) Monitor the implementation of the local QA plan to determine the level of county compliance with Department requirements. Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(VI) Coordinate delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

(VII) Assure record systems to store information and document activities are established and maintained.

(VIII) Perform abuse investigations, if approved by the Department as part of the CDDP's QA plan.

(10) Information and referral. The CDDP must provide information and referral services to individuals, their families and interested others.

(11) Agency coordination. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(12) Maintenance of centralized waiting list. The CDDP must maintain a current unduplicated central waiting list of eligible individuals appropriate for admission to Comprehensive Services for adults, living within the geographical area of the CDDP. Individuals will be placed on a waiting list after written determination of their specific service and support needs; and such information must be provided to the Department upon request. The CDDP must assure that individuals are admitted to programs from the waiting list consistent with Department policies using a fair and equitable process that considers the individual's preferences, circumstances and needs.

(13) Service delivery grievances. The CDDP must implement procedures to address individual or family grievances regarding service delivery that have not been resolved using the CDDP subcontractor's grievance procedures (informal or formal). Such procedures must be consistent with requirements outlined in OAR 411-320-0170.

(14) Comprehensive in-home supports. The CDDP must ensure the availability of Comprehensive In-Home Supports for with developmental disabilities for whom the Department has funded such services. These services must be in compliance with OAR 411-330-0010 through 0170 and any successor rules as may be developed in the future.

(15) Emergency planning: The CDDP must ensure the availability of a plan a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The plan must be immediately available to the program manager and employees. The plan must:

(a) Be integrated with the County emergency preparedness plan where appropriate.

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate.

(c) Include provisions for identifying individuals most vulnerable and any plans for health and safety checks; and emergency assistance.

(d) Other plans that are specific to the type of emergency.

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

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-0320-0050

Management of Regional Services

(1) Intergovernmental agreement. A CDDP that acts as the management entity for a group of counties to deliver long-term crisis/diversion, community training, quality assurance activities, or other services must have an intergovernmental agreement with each affiliated local mental health authority.

(2) Regional plan. The CDDP acting as the management entity for the region must prepare, in conjunction with affiliated CDDP's, a plan detailing the services that will be administered regionally. The plan must be updated when needed and submitted to the Department for approval and must include:

(a) A description of how services will be administered;

(b) An organizational chart and staffing plan;

(c) A detailed budget, on forms provided by the Department.

(3) Implement plan. The CDDP acting as the management entity for the region must work in conjunction with its affiliated CDDP's to implement the Regional plan as approved by the Department, within available resources.

(4) Management standards. The region through the CDDP management entity and its CDDP partners must maintain compliance with management standards outlined in OAR 411-320-0030 and 0050.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0060

Rights of the Individual Receiving Developmental Disability Services

(1) Civil rights. The rights described in this section are in addition to and do not limit, any other statutory and constitutional rights which are afforded all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose of property, enter into contracts and execute documents unless specifically prohibited by law in the case of children under 18 years of age.

(2) Rights of individuals receiving services. Each agency providing any community developmental disability service must have written policies and procedures to provide for and assure individuals the following rights while receiving services:

(a) Protections and well being. A humane service environment that affords reasonable protection from harm and affords reasonable privacy. This includes provisions that ensure that individuals:

(A) Must not be abused or neglected, nor must abuse or neglect be tolerated by any employee, staff or volunteer of the program;

(B) Are free to report any incident of abuse without being subject to retaliation;

(C) Have the freedom to choose whether or not to participate in religious activity and for children according to parent or guardian preference;

(D) Have contact and visits with family members, friends, advocates (except where prohibited by court order) and visits with legal and medical professionals;

(E) Have access to and communicate privately with any public or private rights protection program rights advocate, services coordinator, or CDDP representative;

(F) Be free from unauthorized mechanical or physical restraint; and

(G) Must not be subject to any chemical restraint and assures that medication is administered only for the person's individual clinical needs as prescribed by a physician.

(b) Choice. Individuals must be able to choose from available services those which are appropriate and consistent with the plan, developed in accordance with OAR 411-320-0060(2)(c) and (d) of this rule. Services will promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult. They must be provided in a setting and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for decision making and control of personal affairs appropriate to age.

(c) A plan. Have a written and individualized service plan; with services delivered according to the plan and having periodic review and reassessment of service needs.

(d) Participation. Have an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (c) of this subsection; and the right to be provided with a reasonable explanation of all service considerations.

(e) Informed consent. Have informed voluntary written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.

(f) Written prior consent for experimental programs. Have informed voluntary written consent prior to participating in any experimental programs.

(g) Notice and grievances. Prior notice of any involuntary termination or transfer from services and notification of available sources of necessary continued services and exercise of a grievance procedure.

(h) Compensation. Reasonable and lawful compensation for performance of labor, except personal housekeeping duties..

(i) Due process in civil commitment. Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department.

(j) Be informed. Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedures for reporting abuse; and to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's guardian and any representative designated by the individual.

(k) Grievance. Be informed of and the opportunity to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure.

ADMINISTRATIVE RULES

(l) Free from reprisal. Have the freedom to exercise all rights described in this section without any form of reprisal or punishment.

(3) Assert rights. The rights described in this section may be asserted and exercised by the individual, the individual's guardian and any legal representative designated by the individual.

(4) Children. Nothing in this section should be construed to alter any legal rights and responsibilities between parent and child.

(5) Adults with guardians. Guardians are appointed for an adult only as is necessary to promote and protect the well being of the protected person. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations. An adult protected person for whom a guardian has been appointed is not presumed to be incompetent. A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records. (ORS 125.300)

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-0320-0070

Records of Service

(1) Confidentiality of individual service records. Records of services to individuals with developmental disabilities must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.

(2) Information sharing. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the agency must be available to other community mental health and developmental disability service agencies responsible for the individual's services, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) Record requirement. In order to meet Department and federal record documentation requirements, the CDDP through its employees must maintain a record for each individual who receives services from the CDDP.

(a) Information contained in the record for all individuals receiving services from a services coordinator or a support specialist must include:

(A) Documentation of any initial referral to the CDDP for services.

(B) An application for developmental disability services on the form required by the Department that is completed prior to an eligibility determination;

(C) Sufficient documentation to conform to Department eligibility requirements including letter(s) of determination;

(D) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;

(E) Referral information or documentation of referral materials sent to a developmental disability service provider or another CDDP.

(F) Case notes written by a services coordinator or a support specialist;

(G) Medical information, as appropriate;

(H) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis/diversion or other plans developed as a result of the meeting;

(I) Individual service plans (ISP) or child and family support plans (CFSP) documenting that the plan is authorized by a services coordinator or a support specialist;

(J) Documentation of a review of unusual incidents either in case notes or by electronically entering review of the information into the SERT system and referencing in case notes or placing a copy in the file;

(K) Initial and annual review of Title XIX waiver forms;

(L) Documentation of Medicaid eligibility, if applicable and

(M) Legal records, such as guardianship papers, civil commitment records, court orders, probation and parole information as is appropriate to the individual in question.

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually, for each individual enrolled in comprehensive services, child and family support services, or living with family or independently and not enrolled in a support services brokerage and receiving case management services from the program. Information will include:

(A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and

(B) The names, addresses and telephone numbers of:

(i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable; and

(v) Other agency representatives providing services to the individual.

(J) Any court ordered or guardian authorized contacts or limitations from contact for anyone living in a foster home, supported living program, or 24 hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage and assigned to a support specialist from the program. The current information will include information listed in OAR 411-320-0070 (3)(b)(A) and (B)(i) of this rule.

(4) Case notes. Documentation of the delivery of service by a services coordinator or support specialist through case notes sufficient to support each case service provided. Case notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. This documentation, at a minimum, must consist of material in individual files which includes:

(a) The month day and year the services were rendered and the month, day and year the entry was made if different from the date service was rendered;

(b) The name of the person receiving service;

(c) The name of the CDDP, the person providing the service (i.e., the services coordinator's or support specialist's signature and title) and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. This means the county where the CDDP or agency providing case management services is located, including the address. This may be a standard heading on each page of the progress notes; and

(f) The names of other participants, including titles and agency representation, if any, in notes pertaining to meetings with or discussions about the service recipient.

(5) Retention of records. The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and rules promulgated by the State Archivist (OAR 116-113-0010 or any subsequent revisions). This plan must be made available upon request of the public or the Department.

(a) Financial records, supporting documents, statistical records, must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records will be kept for 7 years after date of death, if known. If case is closed, inactive, or death date is unknown, 70 years. Copies of annual ISPs must be kept for 10 years.

(5) Transfer of records. In the event an individual moves from one county to another county in Oregon, the complete case record as described in OAR 411-0320-0070(3) must be transferred to the receiving CDDP. The sending CDDP must maintain copies of information necessary to document services provided to the individual while enrolled in CDDP services. This must include:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including Waiver eligibility;

(b) Service enrollment and termination forms;

(c) CDDP case notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the state.

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

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0080

Initial Diagnosis and Eligibility Determination

(1) Qualified professional diagnosis. Diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with OAR 309-042-0050 or any successor rules.

(2) Evaluation history. A history showing evaluation patterns of IQ 65 or under can substitute for a current evaluation. In cases where two scores

ADMINISTRATIVE RULES

disagree, i.e. 66 and 73, a third is required to show the pattern. For individuals who have a consistent pattern of cognitive results of an IQ 65 or under, no cognitive re-testing is needed. Individuals with developmental disabilities other than mental retardation who, upon meeting, are obviously significantly adaptively involved;

(a) A Vinland Adaptive Behavior Survey Form or other acceptable measurement of adaptive behavior may be administered and scored by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities; or

(b) A services coordinator with at least two years of experience working with people with developmental disabilities can record their observations of the adaptive impairments in client progress notes.

(c) When making a diagnosis of developmental disability the adaptive impairment cannot be primarily related to any of the following conditions: mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or attention deficit, hyperactivity disorder.

(3) Current evaluation. Evaluation information used in determining eligibility for individuals under age 21 must be no more than three years old. An eligibility determination for an individual age 21 or older must be based on the information obtained after the individual's 17th birthday. At or after age 18, adult evaluation instruments must be used.

(4) Review of eligibility. Eligibility for children under 18 years of age is always provisional. Eligibility should be reviewed at least at age 6 and; between ages 16 and 18 for mental retardation and by age 22 for other developmental disabilities.

(5) Securing evaluations. In the event that the services coordinator has exhausted all local resources to secure the necessary evaluations for eligibility determination, the Department's Diagnosis and Evaluation Coordinator will assist in determining if evaluations are necessary.

(6) Notice. Individuals and their legal representative, family members, or advocates must receive written notice of the eligibility determination. Such notice must include:

(a) The rationale for the decision, including what reports, documents or other information that were relied upon in making the eligibility determination;

(b) Notice that the documents relied upon may be reviewed by the individual or his or her legal representative or advocate; and

(c) Notice of the right to file a grievance to appeal a denial of eligibility, including the timeline for filing a grievance, where to file a grievance and that assistance is available in filing grievances.

(7) Processing eligibility determination. The CDDP of residency of an adult applying for services must process the application and make the determination of eligibility for developmental disability services. In the case of an application for services for a child the CDDP where the parent(s) resides or alternately the county court having jurisdiction for the child must be responsible for making the eligibility determination. The CDDP must process the application for developmental disability services in a timely manner.

(a) Within ten working days after receiving an application for services from an individual, his or her guardian or legal representative, the CDDP will begin the process to determine eligibility.

(b) A determination of eligibility must be made within 15 working days of receipt of information from which eligibility can be established.

(c) Grievances of a denial of eligibility must be conducted in accordance with OAR 411-320-0170(2)(a)(A).

(8) Financial status. The services coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Children or their custodial parent or legal guardian (if not a State agency) should be referred to the appropriate resources if it appears that they or their parent may be eligible for financial assistance.

(9) Transfer between CDDP's. The eligibility determination by a CDDP must be accepted by other CDDP's when an individual moves from one county to another. If the receiving county has reason to question the determination it will immediately refer the matter for a review and further determination by the Department's Diagnosis and Evaluation Coordinator. The receiving county will continue services for the individual while the review is occurring.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0090

Developmental Disabilities Case Management Program Responsibilities

(1) Availability of services coordinator(s). The CDDP must assure the availability of either a services coordinator and or support specialist as required by these rules to meet the service need(s) of the individual and any emergencies or crisis. This assignment must be appropriately documented in individual service records and accurately report enrollment in CPMS.

(2) Policies and procedures. The CDDP must adopt written procedures to assure that the delivery services meets the standards set forth in 411-320-0090(4)(a) through (u) of this rule.

(a) Involvement in planning and review of services. The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Available for review. Copies of the procedures for planning and review of case management services, consumer satisfaction and grievances, must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department.

(3) Notice of Services. Individuals, family member(s), legal representatives and advocates must be informed of minimum case management services, which are set out in 411-320-0090(4)(b) through (u) of this rule.

(4) Minimum standards for case management services. The following are the minimum standards for case management services for individuals with developmental disabilities.

(a) Eligibility. The CDDP must ensure that eligibility for services is determined in accordance with OAR 411-320-0080 by a qualified services coordinator;

(b) Plans and annual summaries. An annual plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1).

(A) The services coordinator must assure that there is an annual plan. He or she must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The services coordinator is responsible for the development of the plan for children receiving family support services in coordination with the child and the family.

(B) An annual summary must be completed for each individual that is not enrolled in any Department funded service other than case management.

(C) Support specialists will review ISP's of individuals enrolled in Support Service Brokerages as part of service authorization in OAR 411-320-0120(3).

(c) Service authorization. Program services must be authorized in accordance with OAR 411-320-0120(3).

(d) Monitoring. Services coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130. Support specialists may participate in monitoring a brokerage service to an individual as part of the CDDP quality assurance plan as approved by the Department.

(e) Entry, exit, or transfer. Entry, exit and transfers from comprehensive program services must be in accordance with OAR 411-320-0110;

(f) Crisis services. Crisis services must be assessed, identified, planned, monitored and evaluated by the services coordinator in accordance with OAR 411-320-0160;

(g) Investigations and protective services. Abuse investigations and provision of protective services for adults must be provided as described in OAR 309-040-0220 through 309-040-0290 (Abuse Reporting and Protective Services in Community Programs and Community Facilities). This includes investigation of complaints of abuse, writing investigation reports and monitoring for implementation of report recommendations.

(h) Civil commitment. Civil commitment services must be provided in accordance with ORS 427.215 through 427.306 and 427.205(4);

(i) Information and referral. The services coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county;

(j) Access. The services coordinator must assist individuals and their families in accessing services and resources;

(k) Child welfare cases. Services coordinators must coordinate services with the Child Welfare (CW) case worker assigned to a child to ensure the provision of required supports from the CDDP, the Department and CW, according to guidelines published by the Department;

ADMINISTRATIVE RULES

(l) Services coordinator role for children in school. Services coordinators may attend IEP planning meetings for children when the services coordinator is invited by the family or guardian to participate.

(A) The services coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible the services coordinator may act as a proponent for the child or family at IEP meetings.

(C) The services coordinator will participate in transition planning by attending Individualized Education Program (IEP) meetings of students 16 years of age or older to discuss the individual's transition to adult living and work situations unless such attendance is refused by the parent or legal guardian.

(m) Enrollment on CPMS. The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in CPMS. The county of residence must enroll the individual on CPMS for all developmental disability service providers except in the following circumstances:

(A) The Department's children's residential services coordinator will complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the state; or

(B) Department Services Coordinators must complete the CPMS enrollment, termination, and billing forms for children entering or leaving the Children's In-home Intensive Services Program (CIIS); or as part of an interagency agreement for purposes of billing for crisis/diversion services by a region.

(n) Nursing home services. Services coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043.

(o) Specialized services. The services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150.

(p) Adult case management only. If an adult is not enrolled in services other than case management and requires more than occasional services or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with the most current published guidelines for access to brokerage services.

(q) Serious events. The services coordinator or support specialist must ensure that all serious events related to an individual are reported to the Department in accordance with the most recent Department Serious Event Review Team (SERT) Manual. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(r) Medicaid waiver(s). Except for children being served by CIIS or in a Department direct contracted 24-hour residential home the services coordinator or support specialist will ensure that Medicaid eligible individuals are offered the choice of home and community based waiver services; provided a notice of fair hearing rights and have a completed Title XIX Waiver form that is reviewed annually or at anytime there is a significant change.

(s) Health care representative. Participate in the appointment of a Health Care Representative per OAR 309-041-1500 through 309-041-1610 or any successor rules,

(t) Interagency coordination. Coordinate with other state, public and private agencies regarding services to individuals with developmental disabilities.

(u) In-home services. The CDDP must ensure that a services coordinator is available to provide or arrange for Comprehensive In-Home Supports for Adults or Child and Family Supports as required to meet the support needs of eligible individuals. This includes:

(A) Assistance in determining needs and plan supports

(B) Assistance in finding and arranging resources and supports

(C) Education and TA to make informed decisions about support need and direct support providers

(D) Arranging fiscal intermediary services

(E) Employer-related supports and

(F) Assistance with monitoring and improving the quality of supports.

(5) Service priorities. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval for a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has must 15 working days to submit the variance request. The variance request must document the reason the service prioritization is necessary (including any alternatives considered), detail the specific service priorities being proposed and provide assurances that the basic health and safety of individuals will continue to be addressed and monitored.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0100

Assignment of Services Coordinator or a Support specialist

(1) Initial designation of services coordinator or support specialist. For individuals determined eligible for developmental disability services, a services coordinator must be designated within ten working days after eligibility determination. In the instance of an adult moving into the county with an existing eligibility determination a services coordinator should be assigned within ten (10) days of application or if already enrolled in a support services brokerage a support specialist must be assigned. A written notice that includes the name, telephone number and location of the services coordinator or support specialist must be sent to the individual requesting services and the individual's legal representative. Notice will be sent to the family or advocate if the adult does not object.

(2) Change of services coordinator. The CDDP should keep changes of services coordinator(s) to a minimum.

(a) Changes in assignment. If the CDDP changes services coordinator assignments or transfers the individual to a support specialist there should be timely notification (within 10 working days of the designation) to the individual, the individual's legal representative and all current service providers. This notification must be in writing and include of the name, telephone number and address of the new services coordinator.

(b) Requests for a change. The individual receiving services or the individual's legal guardian may request a new services coordinator or support specialist within the same county. The CDDP must develop standards and procedures for evaluating and acting upon requests for change of services coordinator or support specialist. If another services coordinator or support specialist is assigned by the CDDP (as the result of a request by the individual or his or her legal representative) the individual, the individual's legal representative and all current service providers must be notified within 10 working days of the change. This notification must be in writing and include the name, telephone number and address of the new services coordinator or support specialist.

(3) Termination of case management services. A services coordinator or support specialist retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with OAR 411-320-0100(3)(a) through (e) of this rule, or until another services coordinator is designated. The CDDP must terminate case management or support specialist services when:

(a) The individual or the individual's legal representative delivers a signed written request that case management or support specialist services be terminated or such a request by telephone is documented in the individual's file. An adult, his or her legal guardian or the parent or legal guardian of a child in Department-funded services can refuse contact by a services coordinator or a support specialist, as well as the involvement of a services at the ISP meeting.

(b) The individual dies; or

(c) The individual is determined to be ineligible for services based on an assessment by a licensed psychologist, certified educational psychologist or psychiatrist in accordance with OAR 411-320-0080; or

(d) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management or support specialist services are to be referred and transferred to the new county. Except in the case of a child moving into a foster home or 24-hour residential home wherein the county of parental residency or court jurisdiction must retain case management responsibility.

(e) An individual cannot be located after repeated attempts by letter and telephone.

(4) Mandatory services necessary. An individual in Department-funded services must accept the following case management services: protective service investigations, services coordinator presence at Department-funded program entry, exit, or transfer meetings, monitoring of provider program(s) and services coordinator or support specialist access to individual files.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0110

Entry and Exit Requirements

(1) Admission to Department funded developmental disability program.

(a) Department staff must authorize entry into to children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs and state training centers. The servic-

ADMINISTRATIVE RULES

es coordinator will make referrals for admission and participate in all entry meetings for these programs.

(b) The services coordinator must ensure that individuals are appropriately referred to a support services brokerage and must participate in the entry of individuals to a support service brokerage according to guidelines established by the Department.

(c) Admissions to all other Department funded programs for persons with developmental disabilities must be coordinated and authorized by the CDDP services coordinator in accordance with these rules.

(2) Written information required. The services coordinator or his or her designee must provide written information to providers of comprehensive services prior to admission.

(a) If the person is being admitted from his or her family home and entry information is not available (due to a crisis) the services coordinator will ensure that the provider assesses the individual upon entry for issues of immediate health or safety and the services coordinator will document a plan to secure the information listed in OAR 411-320-0110(2)(b)(A-J) no later than thirty (30) days after admission. This will include a written documentation as to why the information is not available. A copy of the information and plan will be given to the provider at the time of entry.

(b) If the person is being admitted from comprehensive service the information must be made available prior to the admission. This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam, if any, made within 90 days prior to the entry.

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(F) Copies of protocols, the risk tracking record, and any support documentation.

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the person cannot be honored at that time.

(I) Written documentation that the individual is participating in out of residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, behavior support plan, individual support plan, and individual educational plan, if applicable.

(3) Entry meeting. Prior to an individual's date of entry into a Department funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The team participants will be determined according to OAR 411-320-0120(1)(b). The findings of the meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-entry information required by OAR 411-320-0110(2)(b);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) If the decision was made to enter the individual a written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission;

(g) Record the signatures of all participants;

(4) Crisis services. For a period not to exceed 30 days, OAR 411-320-0110(3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis services.

(5) Exit from Department funded programs. All exits from Department funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for chil-

dren's 24 hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The team participants must be determined according to OAR 411-320-0120(1)(b).

(6) Exit staffing. The exit plan must be distributed to all ISP team members. The exit plan must include:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service (unless the individual, his or her legal guardian, or for a child the parent or guardian is requesting the exit);

(f) Documentation of the decision regarding exit including verification of majority agreement of the meeting participants regarding the decision; and

(h) The written plan for services to the individual after exit.

(7) Transfer meeting. All transfers within a county between service site by a comprehensive service provider agency must be authorized by the CDDP, except as follows. All transfers between Department direct contracted services for children in a 24-hour residential programs and in state operated community programs must be coordinated by Department staff. A meeting of the ISP team must precede any decision to transfer an individual. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reason(s) any preferences of the individual, the individual's legal representative or family members cannot be honored;

(g) Documentation of majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

(8) Entry to Support Services.

(a) Referral. Referrals of eligible individuals to a Support Services Brokerage should be made in accordance with OAR 309-041-1850 (Priority for Referral to Support Services). Referrals must be made using the Department mandated application and referral form in accordance with current Department guidelines.

(b) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services;

(C) The individual is not enrolled in Comprehensive Services;

(D) At the time of initial proposed enrollment in the Brokerage, the individual is not receiving short-term services from the Department because she or he is eligible for, and at imminent risk of, civil commitment under ORS Chapter 427; and

(E) The individual or the individual's legal representative has chosen to use a Support Service Brokerage for assistance with design and management of personal supports.

(c) Required information. The services coordinator will communicate with the support services brokerage staff and provide all relevant information upon request. At a minimum this must include:

(A) A current application or referral on the Department mandated application or referral form;

(B) A completed Title XIX Waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant case notes; and

(G) A copy of any current plan(s).

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. eff. 1-1-04

ADMINISTRATIVE RULES

411-320-0120

Service Planning

(1) Principles for planning. These rules prescribe standards for the development and implementation of plans for individuals with developmental disabilities. As such, plans for individuals must be developed in a manner that address issues of independence, integration and productivity, enhance the quality of life of the person with developmental disabilities and are consistent with the following principles:

(a) Personal control and family participation. While the service system reflects the value of family member(s) participation in the planning process, adults have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(b) Choice and preferences. The process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the team. The individual's active participation and input must be facilitated throughout the planning process.

(c) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services and develop strategies for reducing the barriers.

(d) Health and Safety. The process should also identify strategies to assist the individual in the exercise of his or her rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(e) Children in alternate living situations. When planning for children in 24-hour residential or foster care services the maintaining of family connections is an important consideration. The following should apply:

(A) Unless contraindicated there should be a goal for family reunification.

(B) The number of moves or transfers should be kept to a minimum.

(C) If the placement is distant from the family, the services coordinator should continue to seek a placement that would bring the child closer to the family.

(2) Responsibility for annual ISP, CFSP or annual summary. Individuals enrolled in Department funded services must have an annual ISP or CFSP. Plans will be developed and authorized as follows:

(a) Persons in foster care, 24-hour residential services and related employment or alternatives to employment services. A services coordinator or his or her qualified designee must attend and assure that an annual ISP meeting is held. The services coordinator or his or her qualified designee must participate in the development of the ISP for individuals enrolled in comprehensive services. ISP's for children in Department direct contracted children's 24 hour residential must be coordinated by Department staff.

(A) The services coordinator must ensure that the plan for persons in foster care or 24-hour residential services is developed and updated in accordance with current published state guidelines, tracks the plan timelines and coordinates the resolution of grievances and conflicts arising from ISP discussions.

(B) ISP Team. At a minimum the ISP team for an individual in services described in OAR 411-320-0120(2)(a)(A) above includes, the individual, the individual's guardian, representatives from the residential program, a representative from the employment or alternatives to employment program, if any, the services coordinator, any person requested by the individual and any treatment professional requested by the person or the team on behalf of the person.

(b) Supported living services. The services coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual individual support plan. The services coordinator must attend such ISP meetings and participate in the development of an ISP in conformance with the ISP content described in OAR 411-320-0120(3).

(c) Family support. The services coordinator will coordinate with the family or the legal guardian the development of the annual child and family service plan (CFSP) for a child receiving child and family support services. The CFSP must be in accordance with OAR 309-041-1125 through 309-041-1130 (Child and Family Support Rule).

(d) Comprehensive in-home supports. The services coordinator must coordinate with the individual, his or her family or legal guardian the development of the annual In-Home Support Plan for the individual enrolled in Comprehensive In-Home Supports in accordance with OAR 411-330-0050(3) or any successor rules.

(e) Support services for adults. The support specialist must review and authorize the ISP developed by the individual, his or her legal guardian

and the personal agent in accordance with OAR 309-041-1860 or any successor rules.

(f) Annual summary. For individuals not enrolled in any other Department funded developmental disability service the services coordinator must ensure the completion of an annual summary. The annual summary must be completed within 60 days of intake and annually thereafter. The written summary must be documented in the individual's record as a CDDP plan or as a comprehensive case note and consist of:

(A) A review of the individual's current living situation;

(B) A review of any personal health, safety or behavioral concerns;

(C) A summary of support needs of the individual; and

(D) Actions to be taken by the services coordinator and others.

(3) Plan content. The services coordinator or support specialist (as is appropriate) will ensure that individual plans or the annual summary conform to the requirements of this rule.

(a) The services coordinator must ensure that a plan for an individual in Department funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual and also identifies the supports necessary to address issues of health, behavior, safety and financial supports. There must be documentation of an action plan or discussion record resulting from the team's discussion addressing issues of conflict between personal preferences and issues of health and safety.

(b) The services coordinator must ensure that a plan developed for a child in Department funded child and family support services conforms to requirements of OAR 309-041-1125 through 309-041-1130 or any successor rules for Child and Family Support Services.

(c) The services coordinator must ensure that an In-Home Support Plan conforms to the requirements describes in OAR 411-330-0050(3)

(d) The support specialist must receive a copy of the ISP developed for an individual enrolled in support services for adults that conforms to OAR 309-041-1860(4) or any successor rules for support services for adults.

(4) Plan authorization. The services coordinator or the support specialist must review and authorize plans for the expenditure of Department funds. The plan must be signed within 5 working days by the services coordinator or the support services specialist and be authorized using the following standards:

(a) The plan addresses the needs of the individual as defined in OAR 411-320-0120(3).

(b) The plan identifies type, amount, frequency, duration and provider of services;

(c) The plan is signed by the individual and his or her guardian (if any) and other team members where applicable.

(d) Plans for individuals residing in foster care or residential care licensed by other licensing authorities may be authorized without using the state-mandated formats described in OAR 411-320-0120(5).

(5) Plan formats. The ISP, CFSP, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by the Department. In the absence of a Department mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.

(6) Plan updates. Plans for individuals must be kept current.

(a) Services coordinator responsibility. The services coordinator or the Department Residential Services Coordinator for Children in Department directed contracted 24-hr residential services must ensure that a current plan for individuals enrolled in comprehensive services, self-directed supports or in family support services for children is authorized in accordance with OAR 411-320-0120(4) and maintained.

(A) The plan must be kept in the individual's record.

(B) Plan updates must occur as required by this rule and any rules governing the operation of the service element.

(C) When there is a significant change the plan must be updated.

(b) Support specialist responsibility. Anytime there is a significant change in the individual or his or her circumstances the plan must be updated by the personal agent. An updated plan must be submitted to the support specialist at the CDDP for authorization in conformance with OAR 411-320-0120 (4). The support specialist must maintain a copy of the current ISP for individuals enrolled in support services for adults.

(7) Team process in comprehensive services. Except in Comprehensive In-Home Supports or Child and Family Supports the following applies to ISPs developed for persons in comprehensive services.

(a) ISPs must be developed by an ISP Team. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs.

ADMINISTRATIVE RULES

(A) Membership on ISP teams must, at a minimum, conform to this rule and any relevant service provider rules.

(B) Unless refused by the adult, family participation should be encouraged.

(C) The individual may also suggest additional participants, friends or significant others.

(D) The individual may raise an objection to a particular person. When an individual raises objections to a person the team must attempt to accommodate the objection while allowing participation by agency representatives.

(b) Plans developed by an ISP Team must utilize a team approach and work toward consensus for a meaningful plan for the individual.

(A) No one member of the team has the authority to make decisions for the team except as agreed to on the ISP.

(B) When consensus cannot be achieved majority agreement will prevail. For purposes of the team process and for the reaching majority agreement, representatives from each service provider agency, the family, the CDDP or advocacy agencies will be considered as one member

(C) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a grievance.

(D) The ISP Team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The services coordinator must be notified in all such instances.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0130

Monitoring of Services.

(1) Monthly visits. The CDDP must ensure that a monthly visit is conducted at each child or adult foster home and each 24 hour residential program site licensed or certified by the Department to serve individuals with developmental disabilities. Visits will review areas of service and support to individuals with specific focus on areas addressing health, safety, behavior support or financial services to individuals. A monthly visit by the CDDP is not required when:

(a) A Department licensing team conducts a full survey for the biennial license renewal or a mid-cycle visit. This does not include any subsequent follow-up visits.

(b) The CDDP conducts a review of site based employment services in the county as an alternative to the residential visit. Such alternative monitoring may only substitute for one residential visit and there should never be two consecutive months when a residential site is not visited.

(c) The service provider is a Department contracted and licensed 24 hour residential program for children and a Department children's residential services coordinator is assigned to monitor services. In such instances the Department's residential services coordinator and CDDP staff shall coordinate who will visit and if the visit is made by the Department staff the staff will provide the results of the monitoring to the local services coordinator.

(2) Service delivery. The services coordinator must monitor the delivery of services individuals enrolled in case management services at least annually.

(a) Case Management Only. Every individual enrolled in case management services and not enrolled in any other funded developmental disability service must have at least an annual contact with a services coordinator. Whenever possible this contact will be made in person. If contact is not made in person the case note must document how contact was achieved. The services coordinator must document this contact in an annual summary in accordance with OAR 411-320-0120(1)(f). If the individual has any identified high-risk medical issue, including but not limited to risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues the services coordinator will maintain contact in accordance with planned actions described in the annual summary. Any follow-up must be documented in case notes. The services coordinator may, to the extent resources are available monitor the annual summary of other individuals.

(b) Service monitoring. The services coordinator will monitor services for individuals enrolled in Department-funded comprehensive services or for children enrolled in Child and Family Support Services. For persons residing in 24-hour residential programs or foster care this monitoring may be combined with the monthly visits as described in 411-320-0120(1) above. The services coordinator will determine if services are in accordance with the ISP or CFSP and take appropriate actions to ensure services.

(A) Content of a review. The review of plans for individuals must include the following:

(i) Consideration of any serious events and unusual incident reports and the results of any monthly monitoring visits conducted in residential programs;

(ii) A semi-annual review of the process by which an individual accesses and utilizes funds according to standards specified in OAR 411-325-0380 24-hour residential services or 309-040-0052(4)(c) adult foster care. The services coordinator must report any misuse of funds to the CDDP and the Department. The Department will determine whether a referral to the Medicaid Fraud Control Unit is warranted;

(iii) Review of the ISP document to determine if the goals and objectives or actions to be taken by the provider, the services coordinator or others are implemented. This should include a discussion of the following

(I) Are services being provided as described in the plan document; and do they result in the achievement of the identified action plans;

(II) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(III) Are the personal desires of the individual; the individual's legal representative or family addressed;

(IV) Do the services provided for in the plan continue to meet what is important to and for the individual;

(B) Frequency of ISP reviews. The frequency of the monitoring will be determined by the needs of the individual. At a minimum the results of the ISP for individuals enrolled in comprehensive services must be reviewed at least once within the first 6 months of the plan year and again in preparation for the annual ISP process. The frequency with which individuals presenting with serious health, safety or behavioral risks are monitored should be based on ISP team decisions and CDDP policy.

(C) In monitoring the plan, the services coordinator will document his or her findings and any resulting actions in the individual's CDDP record.

(3) Monitoring follow-up. The services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services except in the instance of children in a Department direct contract 24-hour residential service when a Department staff may conduct the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last review, the services coordinator should initiate action to update the plan.

(b) If there are concerns regarding the service provider ability to provide services the CDDP in consultation with the services coordinator will determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the DD program manager for consultation or corrective action; requesting assistance from the Department for licensing unit or other administrative support, or meetings with the provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for Department-funded programs;

(B) The CDDP finds a serious and current threat endangering to the health, safety or welfare of individuals in a program for which an immediate action by the Department is required; or

(C) Any individual receiving Department funded developmental disability services dies. Notification must be made to the Department's Medical Director or his or her designee within one working day of the death.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0140

Abuse Investigations and Protective Services

(1) General duties of the CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs. If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse. Under such circumstances, the CDDP must receive authorization from the Department before conducting a separate investigation.

(2) Eligibility for protective services. Unless otherwise directed by the Department the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are

(a) Eighteen years of age or older, and

(b) Receiving case management services, or are

(c) Receiving any Department funded services for individuals with developmental disabilities.

ADMINISTRATIVE RULES

(3) Abuse investigations. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions and the report writing process. Investigations must be conducted in accordance with OAR 309-040-0200 through 309-040-0290.

(4) Coordination with other agencies. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) Initial complaints. Initial complaints must immediately be submitted electronically, using the Department's system for reporting serious events.

(6) Conflict of interest. The CDDP must develop and implement procedures to address potential conflicts of interest where a case manager or CDDP employee may fall within the scope of the investigation.

(7) Notification. Upon the initiation of an investigation of an alleged abuse the CDDP must assure the immediate notification of the individual and the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the investigation or protective services unless specifically prohibited by rule or statute.

(8) Reports. The Department or its designee must complete an abuse investigation and protective service report according to OAR 309-040-0260(1). Abuse investigations and protective service reports must be maintained by the CDDP. The sections of a report that are not exempt from disclosure under the public record's law or subject to confidentiality laws will be provided to any service provider organization involved in the allegation. The CDDP must ensure that any actions to prevent further abuse listed in the report are implemented within the deadlines listed.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0150

Specialized Services in a Nursing Home

(1) Plan for specialized services in a nursing home. Individuals residing in nursing homes and determined to require specialized services as defined in OAR 411-070-0043 must have an annual plan for specialized services incorporated with the plan of care by the nursing home.

(a) The services coordinator must coordinate with the individual, his or her legal guardian, the staff of the nursing facility and other service providers, as appropriate, to provide or arrange the specialized services. The plan for specialized services must include:

(A) The name of the provider of services;

(B) A description of the specialized services to be provided;

(C) The number of hours of service per month;

(D) An description of how the services will be tracked; and

(E) A description of the process of communication between the specialized service provider and the nursing facility in the event of unusual incidents, illness, absence and emergencies.

(2) Review of plan. The services coordinator must complete an annual review of the plan for specialized services or when there has been a significant change in the individual's level of functioning. The review will conform to OAR 411-320-0130(2)(b).

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0160

Crisis/Diversion Services

(1) Crisis/Diversion services. The CDDP will in conjunction with its regional partners provide crisis/diversion services for adults who are at imminent risk for civil commitment to Department of Human Services (DHS) under ORS 427, and for children with developmental disabilities who are at imminent risk of out-of-home placement.

(2) Definitions. As used in OAR 411-320-0160 the following definitions apply:

(a) "Adult" means an individual age 18 or older with mental retardation.

(b) "Child" or "children" means any individual with developmental disabilities under age 18.

(c) "Crisis Services" means the arrangement for or facilitation of the purchase or provision of goods and services, directly related to resolving a crisis, and provided to or on behalf of individuals eligible to receive such services.

(d) "Crisis" means one or more of the following risk factors are present:

(A) An individual eligible for crisis services is not receiving necessary supports to address life-threatening safety skill deficits; or

(B) An individual eligible for crisis services is experiencing life-threatening health and safety issues resulting from complex behavioral or medical conditions; or

(C) An individual eligible for crisis services undergoes loss of caregiver due to caregiver illness or disability, or a protective service action that results in loss of home; or

(D) An individual eligible for crisis services presents the following significant safety risks to others in the home:

(i) Physical aggression toward vulnerable people; or

(ii) Fire-setting behaviors; or

(iii) Sexually aggressive behaviors; or

(E) An individual eligible for crisis services currently engages in self-injurious behavior serious enough to cause injury which requires professional medical attention.

(f) "Crisis plan" means the CDDP or Regional Crisis Program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(g) "Home" means the actual physical structure in which a child has been living.

(h) "Imminent Risk" means that within 60 days and without the use of Crisis services, the adult will be civilly court-committed to the Department of Human Services under ORS 427, or the child will require out-of-home placement.

(i) "Eligibility for crisis/diversion services" means:

(A) An individual who is court committed to the Department under ORS 427, or an adult who has a Full Scale Intelligence Quotient (FSIQ) of 75 or less with significant deficits in adaptive functioning due to mental retardation and who is at imminent risk of civil court commitment to the Department under ORS 427; and

(B) With no alternative resources available; and

(C) For whom a crisis exists as defined in (6)(a)-(e) above; or

(D) A child with developmental disabilities who is at imminent risk of out home placement; and

(E) With no alternative resources available; and

(F) For whom a crisis exists as defined in (6)(a)-(e) above.

(j) "Support Team" means a group composed of members as determined by an individual receiving services or the individual's legal guardian, to participate in the development of the individual's plan of care.

(k) "Plan of Care" means the written details of the supports, services and resources provided or accessed to address the needs of the individual. The plan of care is to be developed by the support team, using a person-centered approach.

(l) "Regional Crisis Program" means the regional management and coordination of crisis services for a designated group of counties.

(m) "Service Provider" means an individual or agency contracted by the CDDP, Regional Crisis Program, or Department to provide services as defined in the CDDP or Regional Crisis Program crisis plan.

(n) "Short Term Crisis Services" means service(s) to address a crisis, provided for up to 90 days, or on a one-time basis, to or on behalf of, an individual eligible to receive crisis services.

(3) Eligibility for crisis/diversion services. The CDDP must ensure the determination of the eligibility of individuals to receive crisis services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis programs upon each referral.

(4) Service criteria.

(a) All crisis service expenditures must be directly related to resolving the crisis situation for the individual.

(b) Purchased goods or services must only be those necessary to divert an adult from civil court commitment under ORS.427, or a child from out-of-home placement.

(c) Crisis services must only be used when no alternative resources are available to resolve the crisis situation. Funded residential program vacancies represent existing available and alternative resources.

(d) Allowable short term Crisis Services include, but are not limited to:

(A) Professional consultation, assessment, or evaluation;

(B) Adaptive equipment;

(C) Respite care;

(D) Adaptations to the eligible individual's residence to increase accessibility or security;

(E) Short-term residential or vocational services; or

(F) Added staff supervision.

(e) Service limitations. Crisis services must not include the following:

(A) Household appliances;

(B) Services covered under existing provider contracts with the CDDP or Department;

ADMINISTRATIVE RULES

(C) Health care services covered by Medicaid, Medicare, or private medical insurance; and

(D) Services provided by the parent of a child, or the spouse of an adult.

(5) Funds for crisis services.

(a) Must not supplant existing funding.

(b) Authorization for funding of Short Term Crisis services for individuals eligible to receive crisis services which:

(A) Exceeds \$3,000 per individual case, or 90 days duration must be made by the CDDP or the Regional Crisis Program, and must be documented, in writing, within the individual's case file; or

(B) Exceeds \$5,000 for adaptation or alteration of fixed property must be made by the Department, based upon the recommendation of the CDDP or the Regional Crisis Program.

(c) Wages for direct care staff, respite providers and professional consultants must be paid within the current wage and rate guidelines published by the Department.

(d) The CDDP or the Regional Crisis/Diversion Program must have the capacity to make service payments within 48 hours.

(6) Service authorization

(a) The CDDP or Regional Crisis Program must authorize the utilization of crisis services.

(b) To assure that Crisis services are utilized only when no alternative resources are available, the CDDP or the Regional Crisis Program must document the individual's eligibility for crisis services, the alternative resources considered, and why those resources were not sufficient or available, prior to initiating any crisis services.

(c) The Department may, at its discretion, exercise authority under ORS 427.300 to direct any court-committed mentally retarded person to the facility best able to treat and train the person. The Department must consult with any CDDP, the Regional Crisis Program or service provider affected by this decision, prior to placement of the individual or child.

(7) Administration of short term crisis services. The CDDP and the Regional Crisis Program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of persons or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(8) Monitoring of short term crisis services

(a) The CDDP must ensure, through contact with the individual, service provider(s), and family, monitor and document in the individual's case file, the delivery of crisis services as specified in the crisis plan and the individual's plan of care.

(b) The CDDP must ensure coordination with providers or other support team members, for the evaluation of the impact of crisis services upon the individual, and will ensure needed changes are recommended to the individual's support team.

(c) The Department may monitor crisis services through reports received pursuant to OAR 411-320-0160(9)(10) and 0180 Record Keeping and Reporting Procedures, and on-site inspections.

(9) Record keeping and reporting procedures

(a) The CDDP or the Regional Crisis Program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual including name, address, age, and name of parent or guardian;

(B) Description of the circumstances for which crisis services were requested, to clearly specify how the individual is eligible to receive crisis services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not sufficient or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:

(i) The frequency of the provision or purchase of goods or services; and

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased

(E) Description of the outcome to be achieved to resolve the crisis through the provision or purchase of the goods and services; and

(b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care, that outline how the crisis is to be addressed through the use of crisis services.

(c) The CDDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis services is receiving a Home and Community Based Waiver Services, or as otherwise instructed by the Department.

(10) Reporting requirements. The CDDP or Region must report, using the accepted Department reporting systems, the following information to the Department by the tenth working day the month following each month in which crisis services were provided.

(a) Individuals for whom crisis services were provided;

(b) Individual services provided; and

(c) Total cost by type of service.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. eff. 1-1-04

411-320-0170

Complaints, Grievance and Appeals

(1) Complaint and grievance log. The CDDP will maintain a log of all complaints and grievances, received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The log must, at a minimum, include the following: the date the complaint or grievance was received; the person taking the complaint; the nature of the complaint or grievance; the name of the person making the complaint or grievance, if known; and the disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint and grievance log.

(2) Grievances. The CDDP must address all grievances by individuals or subcontractors in accordance with CDDP policies, procedures and these rules. Copies of the procedures for resolving grievances must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department.

(a) Subcontractor grievances. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of an administrative rule of the Department relating to developmental disability services and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(A) Procedure. The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) Request. The party requesting mediation must send a written request to the Administrator or designee, the CDDP program director, and the provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) Arrangements. Department staff, must arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting should include:

(I) Consideration of the need for services of an outside mediator. If such services are desired, agreement should be made on arrangements for obtaining these services.

(II) Development of rules and procedures that will be followed by all parties during the mediation;

(III) Agreement on a date by which mediation will be completed, unless extended by mutual agreement.

(iii) Cost. Unless otherwise agreed to by all parties:

(I) Each party will be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. will be shared equally by all parties.

(B) Final report. A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department will prepare the final report. A final report on each mediation must be retained on file at the Department.

(b) Subcontractor dispute-contract or substantially similar. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must

ADMINISTRATIVE RULES

be in writing and sent to the Administrator or designee within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

- (i) A copy of the contract and any pertinent contract amendments;
- (ii) Identification of the specific term(s) that are in dispute; and
- (iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of this notice, the CDDP will suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) Process. The Administrator or designee, must offer to mediate a solution in accordance with the procedure outlined in OAR 411-320-0170 (2)(a) (A) and (B).

(i) If a solution cannot be mediated, the Administrator for or designee will declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include, at a minimum:

- (I) A representative from the Department,
- (II) A representative from another CDDP, and
- (III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments and send written recommendations to the Administrator within 45 business days after an impasse is declared, unless an extension is granted by the Administrator.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The Administrator or designee must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding OAR 411-320-0170 (2)(b)(C)(i-iv) listed above, the Administrator has the right to deny the appeal or a portion of the appeal if upon receipt and review of the notice of appeal the Administrator or his or her designee finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

(D) Expedited appeal process. The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the Administrator or designee. It must describe the potential harm and level of risk that will be incurred by following the appeal process.

(ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, the Department's designee must notify all parties of his or her decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process will be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) Grievances by or on behalf of individuals. An Individual, his or her guardian or other legal representative, a family member, or advocate may file a grievance with the CDDP under the following conditions:

(A) Eligibility grievance. Grievances of denials of and initial determination of eligibility for developmental disability services or for an eligibility re-determination of a child turning 18 years of age must be submitted to the CDDP, in writing, within 30 days of receipt of notice of the eligibility determination required in OAR 411-320-0080. The CDDP upon request must assist individuals requiring assistance in preparing a written grievance.

(i) Review of eligibility by the Department's Diagnosis and Evaluation Coordinator. If the CDDP cannot resolve the grievance to the satisfaction of the grievant, the CDDP must, refer the grievance to the Diagnosis and Evaluation Coordinator within 5 working days from the expiration of the time period for review.

(I) Within 30 days of receipt of the grievance, the Diagnosis and Evaluation Coordinator must, based upon a review of the documentation used to deny eligibility, inform the grievant and the CDDP in writing of his or her decision regarding eligibility. The notice must state the reasons for the decision.

(II) If the Diagnosis and Evaluation Coordinator's decision upholds the local denial of eligibility and if resolutions have not been reached, the

individual, his or her family member, legal representative, or advocate may petition the Department for a review by the Department's Eligibility Grievance Review Committee.

(ii) Department eligibility grievance review committee. The Administrator or designee will appoint a grievance review committee to review all grievances of eligibility determinations that fail to be resolved at the local level or by the D & E Coordinator.

(I) The committee must be composed of at least a Department representative, a local service provider program representative and a county case management representative. The Administrator shall appoint the Committee and name the Chairperson.

(II) In case of a conflict of interest the Administrator will temporarily appoint an alternative representative to the committee.

(iii) Upon receipt of the request for formal review the Department must:

(I) Schedule a grievance committee review meeting within 30 days of written request by the requesting party for a formal review of the decision;

(II) Notify in writing, each party involved in the disagreement of the date, time and location of the committee review meeting, allowing at least 15 days from the meeting notification to the scheduled meeting time; and

(III) Record the review committee meeting.

(iv) Individual rights. The Grievance Review Committee must afford individuals the following rights:

(I) The opportunity to review documents and other evidence relied upon in reaching the decision being appealed;

(II) The opportunity to be heard in person and to be represented; and

(III) The opportunity to present witnesses or documents to support their position and to question witnesses presented by other parties.

(v) Within 15 days after the conclusion of the meeting, the grievance review committee must provide written recommendations to the Administrator.

(vi) The Administrator must make a decision and send written notification of the recommendations and implementation process to all grievance review meeting participants within 15 days of receipt of the recommendations.

(vii) The decision of the Administrator is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(B) Dispute with service provider or CDDP services. A grievance may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a grievance.

(ii) The CMHDDP Director or his or her designee must provide to the grievant or appellant a written decision regarding the grievance or appeal within 30 working days of receipt of the grievance or appeal.

(I) The written decision regarding the grievance or appeal must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

(II) Along with the written decision, the grievant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the grievance or appeal; and

(III) Be provided a notice that the grievant has the right to request a review of the decision by the Department. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the Administrator.

(iii) Informal procedures. Grievances or appeals submitted to the CDDP may be resolved at any time through the use of informal procedures such as meetings or mediation. However, the person submitting the grievance or appeal may elect not to use informal procedures. Any agreement to resolve the grievance or appeal must be reduced to writing and must be specifically approved by the grievant or appellant. The grievant or appellant must be provided with a copy of such agreement.

(C) Department review. Following a decision by the CMHDDP Director or his or her designee regarding a grievance or appeal, the grievant may request a review by the Administrator.

(i) The grievant or appellant must submit a request for review within 15 days from the date of the decision by the CMHDDP Director or his or her designee.

(ii) The Administrator or his or her designee must complete a review and provide a written decision to the grievant or appellant within 45 days of receipt of the request for review. The written decision must contain the rationale for the decision.

ADMINISTRATIVE RULES

(iii) The decision of the Administrator or his or her designee is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(3) Appeals. Individual's their guardian, or legal representative may appeal specific decisions by the CDDP, a service provider or a state training center as follows:

(a) Residential. Appeals of entry, exit or transfer decisions within residential services may only be initiated according to the "24-Hour Residential Services" (OAR 411-325-0010 to 0480) and the "Supported Living (OAR 309-041-0550) rules or any successor rules as they may be revised from time to time;

(b) Employment. Appeals of entry, exit or transfer decisions within employment services or community inclusion services may only be initiated according to the "Employment and Alternatives to Employment Services" (OAR 309-047-0140) rule or any successor rules as they may be revised from time to time;

(c) Medicaid. Appeals of Medicaid eligibility decisions may only be initiated according to the "Fair Hearings" (OAR 410-120-0760 to 410-120-1060, Medical Assistance Programs) rule or any successor rules as they may be revised from time to time; and

(d) Eastern Oregon Training Center. Appeals of State Training Center decisions may only be initiated according to OAR 309-118-0000, Grievance Procedure for Use in State Institutions or any successor rules as they may be revised from time to time.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0180

Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance, certification and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Conduct of inspections or investigations. The Department, its designee, or proper authority must perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Plan of correction. A plan of correction must be submitted to the Department for any non-compliance found during an inspection under this rule.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0190

Program Review and Certification

(1) Department review of CDDP. The Department may review the CDDP implementation of these rules as provided for in OAR 411-320-0180.

(2) Certificate of compliance. If following a Department review, the CDDP is in substantial compliance with these rules, the Department will issue a Certificate of Compliance to the CDDP.

(3) Department follow-up. If, following a review, the CDDP or case management provider is not in substantial compliance with these rules, the Department may offer technical assistance or request corrective action. The CDDP will perform the necessary corrective measures required by and in the time specified by the Department. The Department may conduct such reviews as necessary to insure corrective action has been achieved.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

411-320-0200

Variations

(1) Criteria for a variance. Variations that do not jeopardize individuals health or safety may be granted to a CDDP if there is a lack of resources to meet the standards required in this rule and the alternative services, methods, concepts or procedures proposed would result in services or systems that meet or exceed the standards. All variations must be submitted to and approved by the Department prior to implementation.

(2) Variance application. The CDDP requesting a variance must submit, in writing, an application to the Department contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) A description of the alternative practice, service, method, concept or procedure proposed, including how the health and safety of individuals receiving services will be protected to the extent required by these rules;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) Signed documentation from the CDDP reflecting the justification for the proposed variance.

(3) Department review. The Administrator must approve or deny the request for a variance.

(4) Notification. The Department will notify the CDDP of the decision. This notice must be given to the CDDP within forty-five (45) days of the receipt of the request by the OPPD.

(5) Appeal of variance denial. Appeal of the denial of a variance request must be made in writing to the Administrator, whose decision is final.

(6) Written approval. The CDDP may implement a variance only after written approval from the Department. The Intergovernmental Agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04

Adm. Order No.: SPD 25-2003

Filed with Sec. of State: 12-29-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Adopted: 411-325-0010, 411-325-0020, 411-325-0030, 411-325-0040, 411-325-0050, 411-325-0060, 411-325-0070, 411-325-0080, 411-325-0090, 411-325-0100, 411-325-0110, 411-325-0120, 411-325-0130, 411-325-0140, 411-325-0150, 411-325-0160, 411-325-0170, 411-325-0180, 411-325-0190, 411-325-0200, 411-325-0210, 411-325-0220, 411-325-0230, 411-325-0240, 411-325-0250, 411-325-0260, 411-325-0270, 411-325-0280, 411-325-0290, 411-325-0300, 411-325-0310, 411-325-0320, 411-325-0330, 411-325-0340, 411-325-0350, 411-325-0360, 411-325-0370, 411-325-0380, 411-325-0390, 411-325-0400, 411-325-0410, 411-325-0420, 411-325-0430, 411-325-0440, 411-325-0450, 411-325-0460, 411-325-0470, 411-325-0480

Subject: These rulemaking actions implement permanent adoption of Comprehensive 24-Hour Residential Services For Children And Adults With Developmental Disabilities rules. These amendments are taken to: a) move rules governing 24-Hour Residential Services from Chapter 309 to Chapter 411 to better reflect the organizational structure within the Department; b) implement system improvements by updating rule language to be consistent with current practices and Oregon's response to the CMS Regional Protocol for Review of Home and Community Based Waiver Services; and c) strengthen the Department's ability to take sanctioning activity.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-325-0010

Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for 24-Hour Residential Programs providing services to individuals with developmental disabilities. These rules also prescribe the standards and procedures by which the Department of Human Services licenses programs to provide residential care and training to individuals with developmental disabilities.

(2) Statutory authority. These rules are authorized by ORS 409.050 and 410.070 and carry out the provisions of 443.400 to 443.455.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0020

Definitions

(1) "24-Hour Program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748, 418.749 184.805 and includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites, which are deliberately inflicted;

ADMINISTRATIVE RULES

(C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message which is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an Adult. Except for those additional circumstances listed in OAR 411-325-0020(1)(c)(A-F) abuse of an adult 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 caused 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; or

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(c) Abuse in contracted or purchased services. When the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes is but not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or through tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate, unauthorized restraint resulting in injury.

(i) A restraint is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without ISP team approval, identified on the ISP and is described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to: an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or his/her legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with

program or another individual's funds, or the program becoming guardian or conservator.

(3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(4) "Administration of medication" means the act of a staff member who is responsible for the individual's care, of placing a medication in, or on, an individual's body.

(5) "Administrator" means the Assistant, Department of Human Services and Administrator of Seniors and People with Disabilities or that person's designee.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(8) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed provider may petition the suspension, denial or revocation of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(11) "Assessment" means an evaluation of an individual's needs. The evaluation is performed by a services coordinator or other designated Individual Support Plan team members who will use the evaluation to develop the individual's Individual Support Plan (ISP). At a minimum this includes the completion of the Personal Focus Worksheet and Risk Tracking Record.

(12) "Baseline Level of Behavior" means the frequency, duration or intensity of a behavior, objectively measured, described and documented prior to the implementation of an initial or revised behavior support plan. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior should be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(13) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the behavior support plan.

(14) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident reports for each episode of physical intervention, only in circumstances when the physical intervention implemented is: a) the Oregon Intervention System (OIS) defined technique of evasion; or b) for episodes of physical positioning, as defined in 411-325-0020 (60).

(15) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individuals while on the premises of the residence to ensure their health, safety and welfare.

(17) "Chemical restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(18) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(19) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(20) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a spe-

ADMINISTRATIVE RULES

cific geographic area of the state under a contract with the Department or a local mental health authority.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(22) "Competency Based Training Plan" means a written description of a provider's process for providing training to newly hired program staff. At a minimum the plan must address: health, safety, rights, values and personal regard, and the provider's mission. The plan will describe competencies; training methods; timelines; how competencies of staff are determined and documented, including steps for remediation; and when a competency(ies) may be waived by a provider to accommodate a staff person's specific circumstances.

(23) "Complaint investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(24) "Condition" means a provision attached to a new or existing license, which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(25) "Crisis" means a situation, as determined by a qualified services coordinator, that could result in civil court commitment under ORS 427 an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no alternative resources available.

(26) "Denial" is the refusal of the Department of Human Services to issue a license to operate a 24-hour residential home/facility for children or adults because the Department has determined that the home/facility is not in compliance with one or more of these administrative rules.

(27) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(28) "Developmental Disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(29) "Developmental Disability for children five years and younger" means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (28).

(30) "Developmental Disability for children six years and older" is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, sub-

stance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

(31) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(32) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(33) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when; the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule "entry" means admission to a 24-hour licensed home/facility.

(35) "Executive Director" means the individual designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(37) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(38) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(39) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(40) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505 (12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.

(41) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(42) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(44) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(45) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(46) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual if appropriate for in-home supports, the guardian, if any, relatives of the individual, and the services coordinator and other persons who are well liked by the individual.

(47) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

(48) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a per-

ADMINISTRATIVE RULES

son, or agency who is authorized by the court to make decisions about services for the individual.

(49) "Licensee" means a person or organization to whom a license is granted.

(50) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team will have the authority to make decisions for the team. Representatives from service provider(s), families, the CDDP, or advocacy agencies will be considered as one member of the ISP team for the purpose of reaching majority agreement.

(51) "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 an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. 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 40.295.

(52) "Mechanical restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around, and restricts freedom of movement, or access to the individual's body.

(53) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(54) "Modified diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(55) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(56) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught or delegated to the provider and staff.

(57) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(58) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to intervene, physically or non-physically, for the purpose of keeping individuals from harming themselves or others. The system is based on a pro-active approach, which includes methods of effective evasion, deflection and escape from holding.

(59) "Physical intervention" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(60) "Physical positioning" means the manipulation of one's physical presence to provide boundaries to a specified environment to address health and safety concerns for an individual (e.g., placing oneself, not an object, in front of a doorway to discourage an individual from leaving an area of supervision).

(61) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(62) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(63) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(64) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds as soon as possible.

(65) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(66) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(67) "Revocation" is the action taken to rescind a 24-hour home/facility license after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(68) "Self-administration of medication" means without supervision, the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s).

(69) "Services Coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(70) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "program", "applicant" or "licensee" is synonymous with "service provider."

(71) "Significant other" means a person selected by the individual to be his/her friend.

(72) "Specialized diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast, include fresh fruit with each meal.

(73) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds subcontracted with the CDDP or contracted directly through the Department.

(74) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(75) "Suspension of License" is a temporary withdrawal of the approval to operate a 24-hour home or facility after the Department determines that the 24-hour home or facility is not in compliance with one or more of these administrative rules.

(76) "Transfer" means movement of an individual from one home/facility to another within the same county, administered by the same service and which has not been addressed within the ISP.

(77) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(78) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(79) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the provider.

(80) "Volunteer" is any individual assisting in a 24-hour home or facility without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0030

Issuance of License

(1) License required. No person, agency or governmental unit acting individually or jointly with any other person, agency or governmental unit will establish, conduct, maintain, manage or operate a residential home or facility providing 24-hour support services without being licensed for each home or facility.

ADMINISTRATIVE RULES

(2) Not transferable. No license is transferable or applicable to any location, home or facility, agency, management agent or ownership other than that indicated on the application and license.

(3) Terms of license. The Department will issue a license to an applicant found to be in compliance with these rules. The license will be in effect for two years from the date issued unless revoked or suspended.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0040

Application for Initial License

(1) Application. At least 30 days prior to anticipated licensure the applicant must submit an application and required non-refundable fee. The application will be provided by the Department and must include all information requested by the Department.

(2) Number of beds. The application must identify the number of beds the residential home or facility is presently capable of operating at the time of application, considering existing equipment, ancillary service capability and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed must not exceed the number identified on the license to be renewed unless approved by the Department.

(3) Contracts. The initial application must include a copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home or facility.

(4) Floor Plan. The initial application must include a floor plan of the home or facility showing the location and size of rooms, exits, smoke alarms and extinguishers.

(5) Scheduled onsite-licensing inspection. Should the scheduled, onsite licensing inspection reveal that the applicant is not in compliance with these rules, as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the Department's convenience.

(6) License required prior to providing services. Applicants must not admit any individual to the home or facility prior to receiving a written confirmation of licensure from the Department.

(7) Demonstrated Capability and Performance History

(a) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed, or may deny or revoke the license.

(b) Any applicant or person with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such home/facility or agency for purpose of licensing.

(c) The Department may consider the background and operating history of the applicant(s) and each person with a controlling ownership interest when determining whether to issue a license.

(d) When an application for initial licensure is made by an applicant(s) who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home(s) or facility(ies) are not, or have not been, in substantial compliance with the Oregon Administrative Rules.

(8) Separate buildings. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(9) Admittance of individuals. No residential home or facility will admit individuals whose care needs exceed the classification on its license without prior written consent of the Department.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0050

License Expiration, Termination of Operations, License Return

(1) Expiration. Unless revoked, suspended or terminated earlier, each license to operate a residential home or facility will expire two years following the date of issuance.

(2) Termination of operation.

(a) If the home or facility operation is discontinued for any reason, the license will be considered to have been terminated.

(b) Each license will be considered void immediately if the operation is discontinued by voluntary action of the licensee or if there is a change in ownership.

(3) Return of license. The license must be returned to the Department immediately upon suspension or revocation of the license or when the operation is discontinued.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0060

Conditions on License

Attaching conditions to a license. The Department may attach conditions to the license, which limit, restrict or specify other criteria for operation of the home or facility.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0070

Renewal of License

(1) Renewal application required. A license is renewable upon submission of an application to the Department and the payment of the required non-refundable fee, except that no fee will be required of a governmental owned home or facility.

(2) Filing of application extends date of expiration. Filing of an application and required fee for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application and fee are not submitted prior to the expiration date, the home or facility will be treated as an unlicensed home or facility subject to Civil Penalties (OAR 411-325-0460).

(3) Licensing review. The Department will conduct a licensing review of the service prior to the renewal of the license. The review will be unannounced, be conducted 30 — 120 days prior to expiration of the license, and will review compliance with OAR 411-325-0010 through 411-325-0480.

(4) Refusal to renew a license. The Department will not renew a license if the home or facility is not in substantial compliance with these rules, or if the State Fire Marshal or the authorized representative has given notice of noncompliance pursuant to ORS 479.220.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0080

Mid-Cycle Review

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the home or facility nine to fifteen months after renewal of the provider's license under the following circumstances:

(a) Failure by the provider to successfully complete licensing renewal as evidenced by two or more follow-up reviews; or

(b) Failure by the provider to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or provider.

(2) Self-Assessment Required. As part of the mid-cycle process the provider must conduct a self-assessment based upon the requirements of this rule.

(a) The provider must document the findings of the self-assessment on forms provided by the Department;

(b) The provider must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The provider must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR 411-325-0010 through 411-325-0480. The review will be conducted for compliance with OAR 411-325-0010 through 411-325-0480, and at the discretion of the Department the review may be announced or unannounced.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0090

Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) Notice of pending change in ownership, legal entity, legal status, or management corporation. The home or facility must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation.

(2) New license required. A new license will be required upon change in a program's ownership, legal entity or legal status. The program must submit a license application and required fee at least 30 days prior to change in ownership, legal entity or legal status.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

411-325-0100

Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance, license renewal and onsite inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Inspections and investigations by the Department, its designee or proper authority. All inspections and investigations must be performed by the Department, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
- (b) If the alleged victim is in danger or in need of immediate protective services; or
- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or its designee must conduct investigations prescribed in OAR 309-040-0200 through 309-040-0290 and must complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or a law enforcement agency, a provider may conduct an investigation to determine if any personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report, which are public records and not exempt from disclosure under the public records law will be provided to the appropriate provider(s). The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0110

Variations

(1) Criteria for a variance. The Department may grant a variance to these rules based upon a demonstration by the provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of individuals.

(2) Variance application. The provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP according to OAR 411-325-0430.

(3) Community Developmental Disability Program review. The CDDP shall forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) Department review. The Administrator or designee may approve or deny the request for a variance.

(5) Notification. The Department must notify the provider and the CDDP of the decision. This notice will be sent within 30 calendar days of receipt of the request by the Department with a copy to other relevant Department programs or offices.

(6) Appeal. Appeal of the denial of a variance request will be made in writing to the Administrator with a copy sent to the CDDP. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance.

(8) Written approval. The provider may implement a variance only after written approval from the Department.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0120

Health: Medical

(1) Written policies and procedures. The program must have and implement policies and procedures, that maintain and protect the physical health of individuals. Policies and procedures must address the following:

- (a) Individual health care;
- (b) Medication administration;
- (c) Medication storage;
- (d) Response to emergency medical situations;
- (e) Nursing service provision, if provided ;
- (f) Disposal of medications; and
- (g) Early detection and prevention of infectious disease.

(2) Individual health care. The individual must receive care that promotes their health and well being as follows:

(a) The program must ensure each individual has a primary physician or primary health care provider whom he or she, the parent, guardian or legal representative has chosen from among qualified providers;

(b) The program must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

(c) The program must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) A physician's or qualified health care provider's written, signed order is required prior to the usage or implementation of all of the following:

- (A) Prescription medications;
- (B) Non prescription medications except over the counter topicals;
- (C) Treatments other than basic first aid;
- (D) Modified or special diets;
- (E) Adaptive equipment; and
- (F) Aids to physical functioning.

(e) The program must implement a physician's or qualified health care provider's order.

(3) Required documentation. The program must maintain records on each individual to aid physicians, licensed health professionals and the program in understanding the individual's medical history. Such documentation must include:

- (a) A list of known health conditions, medical diagnoses; known allergies and immunizations;
- (b) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and
- (c) A record of known hospitalizations and surgeries.

(4) Medication procurement and storage. All medications must be:

- (a) Kept in their original containers;
- (b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and
- (c) Kept in a secured locked container and stored as indicated by the product manufacturer.

(5) Medication administration. All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

- (a) The name of the individual;

ADMINISTRATIVE RULES

(b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(c) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;

(d) Times and dates of administration or self administration of the medication;

(e) Signature of the person administering the medication or the person monitoring the self administration of the medication;

(f) Method of administration;

(g) An explanation of why a PRN (i.e., as needed) medication was administered;

(h) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(i) An explanation of any medication administration irregularity; and

(j) Documentation of any known allergy or adverse drug reaction.

(6) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(7) Self-administration medications unavailable to other individuals. The program must ensure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication effects safe guards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible all prescription medication, except samples provided by the health care provider, for an individual from a single pharmacy which maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage strength and amount being disposed;

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) Direct nursing services. When direct nursing services are provided to an individual the program must:

(a) Coordinate with the nurse or nursing service and the ISP team to ensure that the services being provided are sufficient to meet the individual's health needs; and

(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the program, the services coordinator must be notified immediately and that notification documented.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0130

Health: Food and Nutrition

(1) Well balanced diet. The provider must provide access to a well balanced diet in accordance with the U.S. Department of Agriculture.

(2) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the program must:

(a) Have menus for the current week that provide food and beverages which consider the individual's preferences and are appropriate to the modified or special diet; and

(b) Maintain documentation that identifies how modified texture or special diets are prepared and served for individuals.

(3) Number of meals. At least three meals must be made available or arranged for daily.

(4) Need and preference of individual. Foods must be served in a form consistent with the individual's need and provide opportunities for choice in food selection.

(5) Prohibited food items. Unpasteurized milk and juice, home canned meats and fish, must not be served or stored in the residence.

(6) Supply of food. Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.

(7) Sanitation. Food must be stored, prepared and served in a sanitary manner.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0140

Health: Physical Environment

(1) Clean and in good repair. All floors, walls, ceilings, windows, furniture and fixtures must be kept in good repair, clean and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting.

(2) Water and sewage. The water supply and sewage disposal must meet the requirements of the current rules of the Department of Human Services governing domestic water supply.

(3) Public water supply. A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(4) Septic tanks or other non-municipal sewage disposal systems. Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

(5) Room temperature. The temperature within the residence must be maintained within a normal comfort range. During times of extreme summer heat, the provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(6) Heat source screens. Screening for workable fireplaces and open-faced heaters must be provided.

(7) Heating and cooling devices. All heating and cooling devices must be installed in accordance with current Building Codes and maintained in good working order.

(8) Handrails. Handrails must be provided on all stairways.

(9) Swimming pools, hot tubs, saunas or spas. Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers and devices designed to prevent injury and unsupervised access.

(10) Sanitation for household pets and other domestic animals. Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger or health risk to individuals residing at the residence or their guests.

(11) Insects and rodents. All measures necessary must be taken to prevent the entry of rodents, flies, mosquito's and other insects.

(12) Garbage. The interior and exterior of the residence must be kept free of litter, garbage and refuse.

(13) State and local codes. Any work undertaken at a residence, including but not limited to, demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable State and local building, electrical, plumbing and zoning codes appropriate to the individuals served.

(14) Zoning. Programs must comply with all applicable, legal zoning ordinances pertaining to the number of individuals receiving services at the residence.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0150

Safety: General

(1) Toxic materials. All toxic materials including, but not limited to, poisons, chemicals, rodenticides and insecticides must be:

(a) Properly labeled;

ADMINISTRATIVE RULES

(b) Stored in original container separate from all foods, food preparation utensils, linens and medications; and

(c) Stored in a locked area unless the risk tracking records for all individuals residing in the home document that there is no risk present.

(2) Flammable and combustible materials. All flammable and combustible materials must be properly labeled, stored and locked in accordance with State Fire Code.

(3) Knives and sharp objects. For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window coverings for privacy. Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water supply and temperature. Hot water in bathtubs and showers must not exceed 120 °F. Other water sources except the dishwasher, must not exceed 140 °F.

(6) Window openings. Sleeping rooms on ground level must have at least one window readily openable from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level. Exterior sill heights must not be greater than 72 inches from the ground, platform, deck or landing. There must be stairs or a ramp to ground level. Those homes/facilities previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

(7) Square footage requirement for sleeping rooms. Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

(8) Flashlights. Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(9) First-aid kit and manual. First-aid kits and first-aid manuals must be available to staff within each residence in a designated location. First aid kits containing any items other than band-aids, tape, bandages and over the counter topicals must be locked.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0160

Program Management and Personnel Practices

(1) Non-discrimination. The program must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The program must have in place and implement personnel policies and procedures, which address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation or when the allegation of abuse has been substantiated.

(3) Prohibition against retaliation. A community program or service provider must not retaliate against any staff who reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. 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, will be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence 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 child or adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the program, 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 program or the individuals served by the program.

(4) Competency-based staff training plan. The program must have and implement a competency-based staff-training plan, which meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CDDP is required to report incidents of abuse when the employee comes in contact with and

has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following will apply:

(a) Agencies providing services to adults must report to the CDDP and law enforcement in the county where the adult resides; and

(b) Agencies providing services to children must report to DHS Child Welfare or law enforcement in the county where the child resides.

(6) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of experience in the identified fields may be substituted for a degree.

(7) General staff qualifications. Any employee providing direct assistance to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Oregon Department of Human Services policy and procedures for review of criminal history;

(c) Be literate and capable of understanding written and oral orders; be able to communicate with individuals, physicians, services coordinators and appropriate others; and be able to respond to emergency situations at all times;

(d) Have clear job responsibilities as described in a current signed and dated job description;

(e) Have knowledge of individuals' ISP's and all medical, behavioral and additional supports required for the individual; and

(f) Have met the basic qualifications in the program's competency based training plan.

(8) Personnel files and qualifications records. The program must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each employee:

(a) Written documentation of references and qualifications being checked;

(b) Written documentation of an approved criminal record clearance by the Oregon Department of Human Services;

(c) Written documentation of employee notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any substantiated abuse allegations;

(e) Written documentation kept current that the staff person has demonstrated competency in areas identified by the provider's competency based training plan as required by OAR 411-325-0160(4), and which is appropriate to their job description;

(f) Written documentation of 12 hours job-related inservice training annually; and

(g) For staff providing direct service, documentation of training in CPR and first aid certification obtained from a recognized trainer before working unassisted and kept current.

(9) Program documentation requirements. All entries required by this rule OAR 411-325-0010 to 411-325-0480 must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated and signed by the person(s) making the entry; and

(d) Be maintained for no less than three years.

(10) Dissolution of program. Prior to the dissolution of a program, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0170

Safety: Staffing Requirements

(1) General staffing requirements. Each residence must provide staff appropriate to the number of individuals served, as follows:

(a) Each home or facility serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present; and

(b) Each program serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present; and

ADMINISTRATIVE RULES

(c) Each home or facility serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home or facility serving children, for any number of individuals, must provide at a minimum one awake night staff on the premises when individuals are present.

(2) Exceptions to minimum staffing requirements in OAR 411-325-0170(1)(a), (b) and (c) for homes or facilities serving adults. A home or facility is granted an exception to staffing requirements in OAR 411-325-0170(1)(a), (b) and (c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults will be home alone at any time without on site supervision;

(b) The amount of time any adult can be left home alone will not exceed five hours within a twenty-four hour period and no adult will be responsible for any other adult or child in the home;

(c) No individual will be left home alone without on site supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult has a documented history of being able to:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where and how to contact the provider in an Emergency;

(D) Before opening door, checks who is there;

(E) Does not invite strangers to the home/facility;

(F) Answers door appropriately;

(G) Use small appliances, sharp knives, kitchen stove and microwave safely;

(H) Self-administers medications, if applicable;

(I) Safely adjusts water temperature at all faucets; and

(J) Safely takes shower/bathes without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult meets the requirements of OAR 411-325-0170(2)(d)(A)-(J).

(3) Changes in an adult's ability to remain home alone without supervision. If at any time the adult is unable to meet the requirements in OAR 411-325-0170(2)(d)(A)-(J), the provider must not leave the adult alone without supervision. In addition, the provider must notify the adult's services coordinator within one working day and request that the ISP team meet to address the adult's ability to be home alone without supervision.

(4) Contract requirements for staff ratios. Each residence must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0180

Safety: Individual Summary Sheets

Current one to two page summary sheet. A current one to two page summary sheet must be maintained for each individual receiving services from the program. The record must include:

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and

(2) The name, address and telephone number of:

(a) The individual's legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;

(b) The individual's preferred physician, secondary physician or clinic;

(c) The individual's preferred dentist;

(d) The individual's identified pharmacy;

(e) The individual's school, day program, or employer, if applicable;

(f) The individual's services coordinator, and for Department direct contracts, Department representative; and

(g) Other agency representatives providing services to the individual.

(3) For children under the age 18 any court ordered or guardian authorized contacts or limitations must also be included on the individual summary sheet.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0190

Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any incident as defined in OAR 411-325-0020(41) involving an individual must be placed in the individual's record. Such description must include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) Sent to guardian and services coordinator. Copies of all unusual incident reports must be sent to the individual's guardian and services coordinator within five working days of the incident.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 411-325-0020(2)(a)(A)-(G), (b)(A)-(E), and (c)(A)-(F). When an abuse investigation has been initiated, the CDDP will assure that either the services coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

(a) The individual's guardian or conservator, parent, next of kin or other significant person;

(b) The Community Development Disability Program; and

(c) Any agency responsible for or providing services to the individual.

(5) Emergency notification. In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

(a) The individual's guardian, if any, or nearest responsible relative;

(b) The individual's designated contact person;

(c) The local police department; and

(d) The Community Development Disability Program.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0200

Safety: Transportation

(1) Vehicles operated to transport individuals. Providers, including employees and volunteers, that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry in vehicles a first aid kit.

(2) Seat belts and appropriate safety devices. When transporting, the driver must ensure that all individuals use seat belts. Individual car or booster seats will be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must ensure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers. Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a driver's license.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0210

Individual/Family Involvement Policy

(1) Individual/family involvement policy needed. The program must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the program;

(b) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the program to interact;

(c) Opportunities for individuals, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

411-325-0220

Individual Furnishings

(1) Bedroom furniture. Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed, including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover, if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings which is readily accessible to the individual; and

(c) A closet or similar storage area for clothing which is readily accessible to the individual.

(2) Linens. Two sets of linens must be provided, or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets, appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

(3) Personal hygiene items. Each person must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0230

Emergency Plan and Safety Review

(1) Written emergency plan. A written emergency plan must be developed and implemented and must include instructions for staff in the event of a fire, explosion, earthquake, accident, or other emergency including evacuation of individuals served at the residence.

(2) Emergency telephone numbers. Emergency telephone numbers must be readily available in each residence in close proximity to phone(s) used by staff as follows:

(a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Executive Director, emergency physician and other persons to be contacted in the case of an emergency.

(3) Quarterly safety review. A documented safety review that is site specific must be conducted quarterly to ensure that the residence is free of hazards. The provider must keep these reports for three years and make them available upon request by the CDDP or Department.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0240

Safety: Assessment of Fire Evacuation Assistance Required

(1) Assessment of level of evacuation assistance required. The program must assess within 24 hours of entry to the residence the individual's ability to evacuate the residence in response to an alarm or simulated emergency.

(2) Documentation of level of assistance required. The program must document the level of assistance needed by each individual to safely evacuate the residence and such documentation must be maintained in the individual's entry records.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0250

Safety: Fire Drill Requirements and Fire Safety

(1) General fire drill requirements. The program must conduct unannounced evacuation drills when individuals are present, one per quarter each year with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening and night shifts with exit routes being varied based on the location of a simulated fire.

(2) Written fire drill documentation required. Written documentation must be made at the time of the fire drill and kept by the program for at least two years following the drill. Fire drill documentation must include:

(a) The date and time of the drill or simulated drill;

(b) The location of the simulated fire;

(c) The last names of all individuals and staff present on the premises at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' as specified in each individual's safety plan;

(e) The amount of time required by each individual to evacuate or staff simulating the evacuation; and

(f) The signature of the staff conducting the drill.

(3) Smoke alarms or detectors and protection equipment. Smoke alarms or detectors and protection equipment must be inspected and docu-

mentation of inspections maintained as recommended by the local fire authority or State Fire Marshal.

(4) Adaptations required for sensory or physically impaired. The program must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0260

Safety: Individual Fire Evacuation Safety Plans

(1) Written fire safety evacuation plan for five or fewer individuals residing in homes, duplexes, or apartments who are unable to evacuate residence in three minutes or less, or who request not to participate in fire drills. For individuals who are unable to evacuate the residence within the required evacuation time, or who, with concurrence of the ISP team, request not to participate in fire drills, the program must develop a written safety plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition and behavioral status;

(b) Identification of how the individual will evacuate his/her residence including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan will be practiced and reviewed by the individual and staff;

(f) The alternative practices;

(g) Approval of the plan by the individual's guardian, case manager and the program director; and

(h) A plan to encourage future participation.

(2) Required documentation of practice and review of safety plans.

The program must maintain documentation of the practice and review of the safety plan by the individual and the staff.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0270

Specific Standards: Safety- Fire Safety Requirements for Homes(s) on a Single Property or on Contiguous Property Serving Six or More Individuals

(1) State of Oregon Building Codes and Fire Code. The home must provide safety equipment appropriate to the number and level of individual's served and meet the requirements of the State of Oregon Structural Specialty and the Fire Code as adopted by the State:

(a) Each residence housing six or more, but fewer than 11 individuals, or each residence that houses five or fewer individuals, but is licensed as single facility due to the total number of individuals served per the license or meets the contiguous property provision, must meet the requirements of an SR 3.3 occupancy; and must:

(A) Provide and maintain permanent wired smoke alarms from a commercial source with battery back-up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor; and

(B) Provide and maintain a 13D residential sprinkler system as defined in the most recent edition of the National Fire Protection Association standard.

(b) Each residence housing 11 or more but fewer than 17 individuals must meet the requirements of an SR-3.2 occupancy.

(c) Each residence housing 17 or more individuals must meet the requirements of and SR 3.1 occupancy.

(2) Licensed capacity plus respite bed for homes on a single property or on a contiguous property serving six or more individuals. At no time will the number of individuals served exceed the licensed capacity, except that one additional individual may receive respite care services not to exceed two weeks. Respite supports must not violate the safety and health sections of this rule.

(3) No admittance of person unable to appropriately respond. The program must not admit individuals functioning below the level indicated on the license for the residence.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0280

Specific Standards: Safety-Fire Safety Requirements for Homes or Duplexes Serving Five or Fewer Individuals

(1) Fire safety requirements. The home or duplex must be made fire safe by:

ADMINISTRATIVE RULES

- (a) Providing a second means of egress.
- (b) Providing a class 2A10BC fire extinguisher easily accessible on each floor in the home or duplex.
- (c) Providing and maintaining permanent wired smoke alarms from a commercial source with battery back up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor.
- (d) Providing and maintaining a 13D residential sprinkler system in accordance with the most recent edition of the National Fire Protection Association Code. Homes or duplexes rated as "Prompt" facilities per Chapter 3 of the 2000 edition NFPA 101 Life Safety Code are granted an exception from the residential sprinkler system requirement.

(2) Exception for permanent wired smoke alarms and 13D residential sprinkler systems. A home or duplex is granted an exception to requirements in OAR 411-325-0280(1)(c) and (d) under the following circumstances:

(a) All individuals residing in the home or duplex have demonstrated the ability to respond to an emergency alarm with or without physical assistance from staff, to the exterior and away from the home, in 3 minutes or less, as evidenced by 3 or more consecutive documented fire drills;

(b) Battery operated smoke alarms with a 10 year battery life and hush feature have been installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6" and 12" from the ceiling and not within 12" of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition; and

(c) A written fire safety evacuation plan is implemented that assures that staff assist all individuals in evacuating the premises safely during an emergency or fire as documented by fire drill records.

(3) Respite care. At no time will the number of individuals served at the residence exceed the maximum capacity of five including respite services. An individual may receive respite services not to exceed two weeks. Respite services must not violate the safety and health sections of this rule.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0290

Specific Standards: Safety-Fire Safety Requirements for Apartments Serving Five or Fewer Individuals

(1) Fire safety requirements. The apartment must be made fire safe by:

(a) Providing and maintaining in each apartment battery-operated smoke alarms with a 10 year life in each bedroom and in a central location on each floor;

(b) Providing first floor occupancy apartments. Individuals, who can exit in three minutes or less without assistance, may be granted a variance from the first floor occupancy requirement;

(c) Providing a class 2A10BC portable fire extinguisher easily accessible in each apartment;

(d) Providing access to telephone equipment or intercom in each apartment, usable by the individual served; and

(e) Providing constantly usable unblocked exits from the apartment and apartment building.

(2) Respite care. At no time will the number of individuals served at the residence exceed the maximum capacity of five including respite services. An individual may receive respite services not to exceed two weeks. Respite services must not violate the safety and health sections of this rule.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0300

Rights: General

(1) Abuse prohibited for adults and children. Adults as defined at 411-325-0020(6) must not be abused nor will abuse be tolerated by any employee, staff or volunteer of the program. Children as defined at 411-325-0020(18) or as defined in these rules must not be abused nor will abuse be tolerated by any employee, staff or volunteer of the program.

(2) Protection and wellbeing. The program must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must, at a minimum, provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order:

(b) Adequate food, housing, clothing, medical and health care, supportive services and training;

(c) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(d) Confidential communication including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical/ physical restraints;

(h) Freedom to choose whether or not to participate in religious Activity;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and for adults over the age of 18 freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(m) Services which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker is allowed to consent or refuse. For children consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The program must have and implement written policies and procedures which protect an individual's rights as listed in OAR 411-325-0300(2)(a)-(p).

(4) Notification of policies and procedures. The program must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise those rights. This must be completed at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0310

Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules are considered "providers" as defined in ORS 179.505(1), and 179.505 will apply.

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0320

Rights: Informal Complaints and Formal Grievances

(1) Grievances. The program must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) Informal complaint resolution. Opportunity for an individual or someone acting on behalf of the individual to informally discuss and resolve any allegation that a program has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity will not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

ADMINISTRATIVE RULES

(b) Formal grievances and grievance log. A description of how the program receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, Department for direct contracted services and notify the Executive Director or designee. The formal grievance policies and procedures must require:

(A) Investigation of the facts supporting or disproving the grievance;

(B) That the Executive Director or designee provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or designee will submit to the CDDP for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Programs Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. In addition, the program must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(2) Notification of policies and procedures. The program must inform each individual, parent or guardian orally and in writing, of its grievance policy and procedures. This must be done at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format and methods of communication appropriate to the individual's needs and abilities.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0330

Rights: Medicaid Fair Hearings

Medicaid service recipients policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0340

Rights: Behavior Support

(1) Written policy required. The program must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) Development of an individualized plan to alter a person's behavior. A decision to develop a plan to alter a person's behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the program.

(3) Functional behavioral assessment required. The program must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior which includes frequency, duration and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, which includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) Behavior support plan requirements. The behavior support plan must include:

(a) An individualized summary of the person's needs, preferences and relationships;

(b) A summary of the function(s) of the behavior, (as derived from the functional behavioral assessment);

(c) Strategies that are related to the function(s) of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies including environmental modifications and arrangement(s);

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan which includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Additional documentation requirements for implementation of behavioral support plans. Providers must maintain the following additional documentation for implementation of behavioral support plans:

(a) Written evidence that the individual, parent(s) (if applicable), guardian or legal representative (if applicable) and the ISP team are aware of the development of the plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the behavior support plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) Notification of policies and procedures. The program must inform each individual and the parent(s), guardian, legal representative of the behavior support policy and procedures at the time of entry to the program and as changes occur.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0350

Rights: Physical Intervention

(1) Circumstances allowing the use of physical intervention. The program must only employ physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others is at risk, and the ISP team has authorized the procedures as documented by an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

(b) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff training. Staff members who support individuals who have a history of behavior that may require the application of physical intervention and the ISP team has determined that there is probable cause for future application of physical intervention must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in his other personnel file.

(3) Modification of OIS physical intervention procedures. The program must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention technique(s). The request for modification of physical intervention technique(s) must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Physical intervention techniques in emergency situations. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the program's executive director or designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

ADMINISTRATIVE RULES

(c) Require submission of an incident report to the CDDP services coordinator, or other Department designee (if applicable), personal agent (if applicable), and the person's legal guardian (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Incident report. Any use of physical intervention(s) must be documented in an incident report excluding circumstances defined in OAR 411-325-0350(7)(a-h). The report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member(s) applying the physical intervention;

(f) The name(s) and position(s) of the staff witnessing the physical intervention;

(g) The name and position of the person providing the initial review of the use of the physical intervention; and

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP services coordinator or other Department designee (if applicable), personal agent (if applicable) and the person's legal guardian (if applicable), unless the physical intervention results in an injury. All interventions resulting in injuries must be documented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable), personal agent (if applicable) and person's legal guardian (if applicable) within one working day of the incident.

(7) Circumstances when a behavior data summary may be substituted for incident reports. The program may substitute a behavior data summary in lieu of individual incident reports when:

(a) Application of the physical intervention technique(s) results in no injury to the individual or others;

(b) The type of physical intervention is limited only to:

(A) The Oregon Intervention System (OIS) Curriculum defined technique of evasion, when the force of the attack is deflected off of the edge of a moving circle; or

(B) For episodes of physical positioning, as defined in this rule.

(c) A formal written functional assessment and a behavioral support plan has been developed;

(d) The individual's behavior support plan defines and documents the baseline level of behavior;

(e) The frequency, duration and intensity of behaviors remains at or below the baseline level of behavior as defined and documented within the behavior support plan;

(f) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual's behavior support plan and the OIS curriculum;

(g) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-0350(5)(a)-(c) and (e)-(h);

(h) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports; and

(i) The CDDP services coordinator or Department designee (if applicable), personal agent (if applicable) and the person's legal guardian (if applicable) has approved the use of the behavioral data summary in lieu of incident reports.

(8) Copy to CDDP. A copy of the behavior data summary must be forwarded every thirty days to the CDDP services coordinator or other Department designee (if applicable), or personal agent (if applicable) and the person's legal guardian (if applicable).

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0360

Rights: Psychotropic Medications and Medications for Behavior

(1) Requirements. Psychotropic medications and medications for behavior must be:

(a) Prescribed by physician or health care provider through a written order; and

(b) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences.

(2) Balancing test. When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the DHS Balancing Test Form. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0370

Rights: Individuals' Personal Property

(1) Record of personal property. The program must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from the record;

(d) Signature of staff making each entry; and

(e) A signed and dated annual review of the record for accuracy.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0380

Rights: Handling and Managing Individuals' Money

(1) Policies and procedures. The program must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his/her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account the individual's interests and preferences.

(2) Individual written record. For those individuals not yet capable of managing their own money, as determined by the ISP Risk Tracking Record or guardian, the program must prepare and maintain an accurate written record for each individual of all money received or disbursed on behalf of or by the individual. The record must include:

(a) The date, amount and source of income received;

(b) The date, amount and purpose of funds disbursed; and

(c) Signature of the staff making each entry.

(3) Reimbursement to individual. The program must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of any staff member of the program or for any funds within the custody of the program that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0390

Entry, Exit and Transfer: General

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

(a) Be referred by the Community Developmental Disability Program;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Authorization of entry into 24-Hour Residential programs. The CDDP Services Coordinator except in the cases of children's residential services and state operated community programs must make authorization of entry into 24-Hour residential program. The Department must authorize admission into children's residential services and state operated community programs.

(3) Information required for entry meeting. The program must acquire the following information prior to or upon an entry ISP team meeting:

(a) A copy of the individual's eligibility determination document;

ADMINISTRATIVE RULES

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes, where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) Results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

(e) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or health care representative or any other legal restrictions on the rights of the individual, if applicable;

(g) Written documentation that the individual is participating in out of residence activities including school enrollment for individuals under the age of 21; and

(h) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, Individual Support Plan, and Individual Education Plan if applicable.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-325-0390(3)(a)-(h) is not available the program will ensure that they assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after entry. This must include a written justification as to why the information is not available.

(5) Entry meeting. An entry ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-entry information required by OAR 411-325-0390(3)(a)-(h);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(6) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from service (unless the individual, individual's guardian, or for a child the parent or guardian is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(7) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(a) The individual and his/her guardian or legal representative requests an immediate move from the home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings other than detention for a child;

(8) Transfer meeting. Transfer of an individual must be preceded by a meeting of the ISP team before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call(s);

(c) Documentation of the participants included in the meeting or telephone call(s) including for a child, a parent or guardian who is participating to sign documents;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, guardian, legal representative, parent or family members cannot be honored;

(g) Documentation of a majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0400

Entry, Exit and Transfer Appeals

(1) Appeals. In cases where the individual, parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal. A request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the appeal is resolved.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the appeal is resolved.

(2) Appeal to the CDDP. All appeals must be made to the CDDP Director or designee in writing, in accordance with the CDDP's dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDP's dispute resolution policy.

(3) Appeal to Department. In cases where the CDDP's decision is in dispute written appeal must be made to the Department within ten days of receipt of the CDDP's decision.

(4) Department appeal process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a written response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(5) Documentation required. Documentation of each appeal and its resolution must be filed or noted in the individual's record.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0410

Respite Care Services

(1) Qualifications for respite care services. All individuals considered for respite care services funded through 24-hour residential services must:

(a) Be referred by the Community Developmental Disability Program or Department;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Respite care plan. The individual, provider, and the guardian, legal representative, advocate, parent and family or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services. This meeting may occur by phone and the CDDP or Department will ensure that any critical information relevant to the individual's health and safety including physicians orders will be made immediately available. The outcome of this meeting will be a written respite care plan which must take effect upon entry and be available on site, and must:

(a) Address the individual's health, safety and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the plan; and

(c) Specify the anticipated length of stay at the residence up to 14 days.

(3) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(4) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0420

Crisis Services

(1) Qualifications for crisis services. All individuals considered for crisis services funded through 24-hour residential services must:

(a) Be referred by the Community Developmental Disability Program or Department;

ADMINISTRATIVE RULES

(b) Be determined to have a developmental disability by the Department or its designee;

(c) Be determined to be eligible for DD Services as defined in OAR 411-325-0020(28), (29), or (30), or any subsequent revision thereof; and

(d) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Support Services Plan of Care and Crisis Addendum required. Persons receiving support services under chapter 411 division 340, receiving crisis services must have a Support Services Plan of Care and Crisis Addendum upon entry to the program.

(3) Plan of Care required for persons not enrolled in support services. Persons, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individual's health and safety including current physicians orders.

(4) Risk Tracking Record required. Persons not enrolled in support services, receiving crisis services for 90 days or more must have a completed Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Risk Tracking Record..

(5) Entry meeting required. Entry meetings are required for individuals receiving crisis services.

(6) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(7) Waiver of appeal rights for entry, exit and transfers.

Individuals receiving crisis services do not have appeal rights regarding entry, exit or transfers.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0430

Individual Support Plan

(1) Department Individual Support Plan implementation schedule. Providers must participate as scheduled in the Department ISP training and must implement the required Department ISP process after completion of training.

(2) Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the residence within 60 days of entry and annually thereafter, unless the provider has not been trained to implement the new Department ISP process. In situations where the provider has not been trained, the individual must have a completed ISP with supporting documents as required by OAR 309-041-1300 through 309-041-1370.

(3) Preparation for ISP. The following information must be collected and summarized within 45 days prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(4) Content of Individual Support Plan. A completed ISP must be documented on the Department required form that includes the following:

(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan(s);

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(5) Documentation required. The provider must maintain documentation of implementation of each support and service noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP and Department representatives.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0440

Children's Direct Contracted Services

For purposes of this rule chapter 411 division 325, any documentation or information required to be submitted to the CDDP Service's Coordinator, must also be submitted to the Department Residential Service's Coordinator assigned to the home or facility.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0450

Conditions

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home/facility is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a licensee include:

(a) Restricting the total number of individuals;

(b) Restricting the number and support level of individuals allowed within a licensed classification level based upon the capacity of the provider and staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training of provider/staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS chapter 183.310 to 183.550.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the providers right to a hearing.

(5) Length of conditions. Conditions may be imposed for the extent of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the license.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0460

Civil Penalties

(1) Long-term care facility statute applicable. For purposes of imposing civil penalties, 24-Hour residential homes and facilities licensed under ORS 443.440 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Schedule and sections of rule subject to civil penalties. The Department will exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to 24 hour residential homes and facilities:

(a) Violations of any requirement within any part of the following sections of the rule may result in a civil penalty up to \$500 per day for each violation not to exceed \$6,000 for all violations for any licensed 24-hour residential home or facility within a 90-day period:

(A) 411-325-0120(2), (11);

(B) 411-325-0130;

(C) 411-325-0140;

(D) 411-325-0150;

(E) 411-325-0160;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), (2);

(J) 411-325-0230;

(K) 411-325-0240,0250,0260,0270,0280 and 0290;

(L) 411-325-0300, 0310,0320,0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0430(3) and (4); and

(O) 411-325-0440.

(b) Civil penalties of up to \$300 per day per violation may be imposed for violations of any section of this rule not listed in (2) (a) (A)-(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential home or facility where such surveys are conducted by an employee of the Department. Penalties assessed under this section will not exceed \$6,000 within a 90-day period.

(3) Monitoring defined. For purposes of this rule, a monitoring occurs when a 24-hour residential home or facility is surveyed, inspected or inves-

ADMINISTRATIVE RULES

tigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department will consider the following factors:

(a) The past history of the program incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential homes or facilities;

(c) The economic and financial conditions of the program incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety and well-being of individuals.

(5) Due and payable. Any civil penalty imposed under ORS 443.455 and 441.710 will become due and payable when the program incurring the penalty receives a notice in writing from the Administrator or designee. The notice referred to in this section will be sent by registered or certified mail and will include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the program's right to request a hearing.

(6) Timeline to make written application for a hearing. The person representing the program, to whom the notice is addressed will have 20 days from the date of mailing of the notice in which to make written application for a hearing before the Department.

(7) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) Failure to request a hearing within 20 days. If the program notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) Program is found to be in violation of a license, rule, or order listed in ORS 441.701(1). If, after a hearing, the program is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a 24-hour residential home or facility issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(13) Judicial review of civil penalties. Judicial review of civil penalties imposed under ORS 441.710 will be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) Penalties recovered. All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0470

License Denial, Suspension, Revocation, Refusal to Renew

(1) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a license where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) Imminent danger to individuals. The Department will suspend the home or facility license where imminent danger to health or safety of individuals exists.

(3) Provider agency on list for Centers for Medicare and Medicaid Services excluded or debarred providers. The Department will deny, suspend, revoke or refuse to renew a license where it finds that a provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with rules of the Department and ORS Chapter 183.

(5) Failure to disclose requested information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the license.

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a license if the licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a Civil Penalty.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

411-325-0480

Criminal Penalties

(1) Violation of ORS 443.400 to 443.455. Violation of any provision of 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of ORS 443.881. Violation of any provision of 443.881 is a Class C misdemeanor.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04

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

Adm. Order No.: VRS 2-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 12-1-03

Rules Adopted: 582-010-0030

Rules Amended: 582-010-0005, 582-010-0010, 582-010-0015, 582-010-0020, 582-010-0025, 582-070-0020, 582-080-0020, 582-085-0020

Subject: These amendments clarify that contractors providing vocational rehabilitation services such as assessment, job development, job placement, and job coaching must provide proof of required insurance, submit a signed Statement of Assurances and Conditions, clear any applicable criminal history check, and be placed on the OVRS vendor list. The amendments clarify that these contractors must qualify under state law as independent contractors, or non-profit or for-profit organizations, or sole proprietorships with employees/contractors. The amendments centralize placement on the approved vendor list, clarify duration of approval, and establish the process for denial and termination of approved status. Contractors receiving less than \$5000 in funds are no longer exempt from certain requirements through an interim approval, including purchase of business liability insurance and, if transporting clients, purchase of \$1 million personal injury automobile insurance. Insurance requirements are extended to peer mentors. Interim approval is only available to agencies awaiting accreditation that meet other requirements. The amendments clarify performance expectations and prohibited conduct. The amendments clarify distinctions between regulations applying to treatment professionals, employment professionals, and other vendors.

Rules Coordinator: Robert Trachtenberg—(503) 945-6734

582-010-0005

Statement of Policy

(1) Clients of OVRS should receive community rehabilitation services from a broad range of providers of varied sizes and types, offering a wide scope of services. Availability of all types of community rehabilitation services is essential to establishing and maintaining a statewide network of vocational rehabilitation services.

(2) OVRS promotes the quality of community rehabilitation services by providing standards for its direct client service providers who have no other state mandated licensing and monitoring requirements.

(3) OVRS promotes the availability, relevance and quality of community rehabilitation services through a flexible yet thorough process of approval tailored to utilization needs identified locally and reflected in the State Plan.

ADMINISTRATIVE RULES

(4) The inclusion of a provider of community rehabilitation services on the OVRS list of approved vendors does not commit OVRS to utilize the available services.

(5) OVRS does not provide any provider of community rehabilitation services with a guarantee of a total dollar commitment or number of total client referrals during any specific time frame except if determined as a condition of a cooperative agreement for implementing a federal grant or service contract.

(6) Providers of community rehabilitation services are expected to fully inform OVRS clients of the purpose and results of all service delivery efforts made on their behalf.

(7) Providers of community rehabilitation services performing job development or placement tasks should only refer OVRS clients to appropriate previously-agreed on employment opportunities.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-010-0010

Definitions

For the purposes of these rules the following definitions apply:

(1) "Accreditation" is the term signifying that a community rehabilitation program meets standards of performance set by an organization or methodology listed in these rules.

(2) "Approval" is a term signifying that OVRS standards for vendor selection are met, and the vendor may be utilized by a local OVRS office to provide OVRS purchased services for individuals with disabilities.

(3) "Certification" refers to the acknowledgment by OVRS that the CRP has completed required application procedures and, if applicable, met specific accreditation standards.

(4) "Community Rehabilitation Program" is referred to in these rules as "CRP" and means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities to enable the individual to maximize opportunities for employment, including career advancement:

(a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational rehabilitation needs (including technicians for assessment tests);

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Orientation and mobility services;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(p) Personal assistance services; or

(q) Services similar to the services described in subsections (a) through (p) of this section. For the purposes of this definition, the word program means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(5) "Department of Administrative Services" (DAS) is the administrative unit of the State of Oregon that is responsible for setting certain standards that apply to all state vendors and whose standards may apply to OVRS vendors.

(6) "Interim Approval" refers to the authority of OVRS to approve a CRP for the purchase of CRP services within a limited time period while an application for CRP vendor "Approval" or "Certification" is being processed.

(7) "Provider of community rehabilitation services" includes CRPs as well as independent contractors that provide the services described in OAR 582-010-0010(4)(a-q).

(8) "Rehabilitation Facility", for the purposes of these rules, means a CRP or unit of a larger organization which meets the definition for a CRP and that is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities and that provides singu-

larly or in combination, one or more of the services listed in OAR 582-010-0010(4).

(9) "State Standards for Vendor Approval" in these rules mean a set of criteria, applied as appropriate to the type of program and used by OVRS to evaluate a provider's operation and to determine whether the provider may be listed as an approved vendor. State Standards are in addition to any federal requirements in the Act or regulations and shall for CRPs, at a minimum and as appropriate, relate to physical plant, health and safety, production, insurance, physical accessibility, organization, fiscal management, personnel, program management, consumer issues, program evaluation, human rights (including the safeguarding of confidential information about clients), and community relations.

(10) "Statement of Assurances and Conditions" means a document executed and signed by a CRP vendor attesting to an understanding of and intent to comply with applicable criteria in these rules and any attending policy for implementing these rules.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-010-0015

Recognized Accreditation Methodologies for Providers of Community Rehabilitation Services

When viewed in combination with applicable State Standards in these rules, OVRS recognizes the following accreditation options:

(1) Accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(2) Accreditation by the Rehabilitation Services Accreditation System (RSAS).

(3) Certification by Department of Human Services, Seniors and People with Disabilities for employment services under OAR 309-047-0000 through 309-047-0140, or as Support Service Brokerages or Provider Organizations under OAR 411-340-0010 through 411-340-0180 for adults with developmental disabilities.

(4) As appropriate, for an individual providing community rehabilitation services, certification by the Commission on Rehabilitation Counselor Certification (CRCC) or by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services.

(5) Accreditation by the Northwest Association of Schools and Colleges (NASC) if clear evidence of relationship to OAR 582-010-0025 is provided.

(6) Registration or certification by the Child Care Division of the Oregon Department of Employment.

(7) Accreditation by other organizations approved by OVRS demonstrating an ability to evaluate based upon State Standards in OAR 582-010-0025.

(8) For providers of vocational rehabilitation services other than vocational, personal and/or work adjustment, skill training, work readiness retention, job development, or extended employment, accreditation may be by a recognized accrediting organization or methodology within the field of expertise of the provider.

(9) An out-of-state CRP may be accredited by an approved organization or by current placement on the approved CRP vendor list of that state's vocational rehabilitation agency.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-010-0020

Approval Policy

(1) Approval Required:

(a) No person, public or private organization shall on behalf of OVRS provide vocational rehabilitation services and receive vocational rehabilitation fees without first submitting all required application materials and being placed on the Approved Vendor List of OVRS.

(b) At the discretion of OVRS, separate approvals may be required for separate sites and/or for different programs operated under the same management.

(c) Approvals under OAR 582-010-0020 are valid for a period of two years, with the exception of Interim Approvals, which are valid for the term or condition stated. Prior to the expiration of a two-year approval, a provider of community rehabilitation services must reapply for approval.

(d) OVRS may require full or partial reapplication when a CRP undergoes significant changes in its management or operation.

ADMINISTRATIVE RULES

(2) Providers of community rehabilitation services exclusively providing services described in OAR 582-010-0010(4)(a-f)(m) or (p), or exclusively providing child care:

(a) These providers are eligible for the approved vendor list if they maintain compliance with the relevant licensing or certifying body, the applicable requirements in divisions 70, 75, 80 and 85 of chapter 582 of the Oregon Administrative Rules, and the criminal history check requirements of chapter 410 of the Oregon Administrative Rules; and

(b) These providers are exempt from OAR 582-010-0020(3) – (10).

(3) Providers of community rehabilitation services that provide services listed in OAR 582-010-0010(4)(g-l)(n-o)(q) and that are not exempt under OAR 582-010-0020(2) must meet all of the following criteria prior to providing any services to OVRs or its clients:

(a) Be placed on an OVRs vendor list;

(b) Provide proof of insurance as required by OVRs under Department of Administrative Services guidelines;

(c) Submit a signed Statement of Assurances and Conditions;

(d) Clear the Criminal History Check required by the Department of Human Services under chapter 410 of the Oregon Administrative Rules if applicable.

(4) Providers of community rehabilitation services that are individuals or sole proprietors without employees/contractors who provide direct services to OVRs clients must qualify under state law as independent contractors but do not have to provide verification of accreditation.

(5) Providers of community rehabilitation services that are non-profit or for-profit organizations, or sole proprietorships with employees/contractors who provide direct services to OVRs clients must provide verification of accreditation or proof of a pending application for accreditation.

(6) A Statement of Assurances and Conditions must be provided and signed by the designated representative of the provider, and reviewed mutually by OVRs and the provider for compliance and continued applicability, and must include:

(a) A description of the scope and nature of service(s), conditions, criteria and procedure under which each service is provided, and rates of payment for each approved service or group of services;

(b) A statement that prior authorization must be secured in writing from the referring counselor or other appropriate representative of OVRs before client services are provided at a cost to the local OVRs office;

(c) Assurances of compliance with State Standards and federal requirements as appropriate for the specific provider;

(d) Assurances that the provider will compile and submit, as required by OVRs, pertinent process and outcome data concerning the service(s) or groups of services provided; and

(e) Assurances that pertinent program and fiscal records shall be accessible for necessary review and/or audit by or for OVRs.

(7) Interim Approval may be granted to a CRP that has filed the necessary forms to meet the requirements of OAR 582-010-0020(3) and 582-010-0020(5) while waiting for final "Approval". If "Approval" has been delayed due to reasons of the accreditation body, an extended period of "Interim Approval" may be granted upon receipt of verification from the accreditation body that the delay is not the result of CRPs failure to address deficiencies in a timely manner.

(8) Provided the availability of OVRs funds, grants may be awarded to CRPs who qualify under OAR 582-010-0020(5), unless prohibited by another rule, to assist with meeting CRP "Approval" requirements or to expand resources and services that will be made available to OVRs clients. Application for a grant must be made in writing and contain at a minimum:

(a) A description of the deficiency which prevents the CRP from gaining "Approval" status and how the funds will be used to address the deficiency, or a description of the desired resource or service expansion that the funds will provide along with a demonstration of need by OVRs for such resources or services;

(b) A detailed budget for the use of the grant funds; and

(c) Assurance that the CRP is prepared to assume all costs associated with maintaining a non-deficient status, and ongoing costs to maintain associated the new resources or services.

(9) A notice of approval or denial for "Approved or Interim Approval" status will be provided in writing to the CRP within 30 days of OVRs receipt of requirements stated in this rule.

(10) It is the responsibility of the provider of community rehabilitation services to assure that the requirements of OAR 582-010-0020 are fully met at all times.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-010-0025

State Standards for Vendor Approval for Providers of Community Rehabilitation Services

In addition to the vendor approval requirements of OAR 582-080, OVRs adopts the following State Standards as required assurances that services to individuals with disabilities are provided in a safe environment and in compliance with applicable state, federal and local laws, rules or regulations. Approval methods will evaluate each applicant's ability to assure compliance with each of the following standards which, for the purposes of these rules, apply to the type of provider being evaluated:

(1) Physical Plant Standards. Provides services in an environment which meets accessibility requirements, is free of known health or safety hazards and in a site(s) which serves to support the accomplishment of its defined purpose(s).

(2) Health and Safety Standards. Meets all applicable governmental requirements, including OSHA standards for the Department of Labor; secures regular inspections and consultations (if applicable) from persons with expertise; and, has an organized internal health and safety program (if applicable).

(3) Production Standards. When work opportunities are directly provided to individuals with disabilities: Establishes production and payment practices which maximize earning potential; assures fair and equitable wages; meets minimum expectations for working hours and conditions; and maintains all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor.

(4) Insurance Standard. Maintain required workers' compensation insurance and applicable levels of vehicle, general and (if required) professional liability insurance protection, adequate to compensate staff and workers with disabilities for injuries and damages for which the organization may be liable.

(5) Physical Accessibility Standard. Complies with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in **41 CFR Part 101-19.6, the American National Standards Institute No. A117-1-1986**, and applicable sections of the **Americans with Disabilities Act**.

(6) Organizational Standard. The CRP is structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan and monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.

(7) Fiscal Management Standard. Fiscal affairs relative to provision of rehabilitation services are managed in a manner consistent with its stated purposes and in accordance with a standard of sound business practices and legal requirements, including assurances that any state or federal audit and reporting requirements are met.

(8) Personnel Standard. As applicable, maintains competent qualified staff and written agency personnel policies which support the provision of services essential to the achievement of defined individual and program goals. The provider, when providing client transportation, ensures use of qualified, licensed vehicle operators and appropriate, safe vehicles. Appropriate criminal background check has been conducted on all staff/employees and has such on record according to state, federal and local laws, rules or regulations. When providing medical and related health services, ensures such services are prescribed by or under the formal supervision of persons licensed by the state to prescribe or supervise the provision of these services. Maintains pertinent professional and business licensure or certification as appropriate to the type of program or service(s) provided to clients.

(9) Program Management Standard. Ensures that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration, and/or productivity as identified within each Individualized Plan for Employment and through consumer participation in service planning, implementation and evaluation, using language or mode of communication most compatible with the individual client's abilities and culture.

(10) Program Evaluation Standard. Utilizes an approved method to enable it to identify the results of services to individuals with disabilities against established goals. Provides timely reports to OVRs of such information, and by such means, as OVRs may require for evaluation of ongoing program effectiveness, costs, and appropriateness of services provided by the provider.

(11) Human Rights Standard. Ensures, in its policies and practices, compliance with all laws and regulations dealing with non-discrimination, human and civil rights, personal dignity and choice, and confidentiality.

(12) Community Relations Standard. The provider bases its program on documented evidence of the needs of prospective and current consumers and maintains effective communications to assure the programs and services are responsive and appropriately utilized.

ADMINISTRATIVE RULES

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 344
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 26, f. & ef. 7-1-77;
VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef.
1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-010-0030

Termination or Denial of Approval or Interim Approval

(1) The decision to deny or terminate "Approval or Interim Approval" shall be made in writing by OVRs. This notice shall contain the reason, the effective date, any requirements for reinstatement if applicable, and the appeals process.

(2) OVRs will provide compensation for verifiable, authorized services provided by the provider of community rehabilitation services prior to the effective date of termination.

(3) No OVRs funds will be provided for services or grant activities after the effective date as stated in the OVRs notice.

(4) OVRs may provide 30-days notice of termination or denial where any of the following reasons apply:

- (a) Mutual agreement;
- (b) Failure to provide or complete the required application;
- (c) Termination of accreditation by the certifying body; or
- (d) Failure to meet a service commitment.

(5) OVRs may terminate or suspend an approval without 30-days notice on for any of the following reasons:

(a) Engagement in or toleration of sexual harassment of any kind toward a consumer, i.e., deliberate or repeated comments, gestures or physical contact of sexual nature;

(b) Violation of any applicable state or civil rights law;

(c) Commitment of fraud, misrepresentation, or serious error of authorization on billing statement;

(d) Engagement in collusion to withhold information, or submit false or misleading documentation in order to generate payment;

(e) Engagement in collusion to violate any OVRs Administrative Rule (Chapter 582); or

(f) Instructing any individual to engage in behavior contrary to the requirements of OVRs Administrative Rules (Chapter 582).

(6) An informal appeal of a decision to deny or terminate approval may be made to the OVRs Administrator within 30 days of the date of the written decision.

Stat. Auth. ORS 344.530
Stats. Implemented: ORS 344.530, ORS 344.550
Hist.: VRS 2-2003, f. & cert. ef. 12-31-03

582-070-0020

Specific Policies

Specific rules pertain to the provision of the following services:

(1) On-the-Job Training:

(a) Payment to on-the-job trainers/employers for training services will be negotiated at the lowest reasonable level and will always be considered as reimbursement for actual expenses and/or trainer time; the trainer/employer cannot expect to make a profit from such payments;

(b) Offset against client wages will be negotiated with the trainer/employer on a mutual sharing basis at the lowest reasonable level to adequately pay the client for his/her productive work efforts with the trainer/employer ultimately paying the entire wage. Total length of the training program and length of OVRs involvement in payments will be negotiated on the basis of the complexity of the training and the amount of relevant skill and knowledge the client possesses prior to entering training.

(2) Training: Educational and training services, except on-the-job training, must be purchased from public educational organizations in Oregon. Exceptions are authorized only when:

(a) No publicly-supported school provides the courses necessary for the client's needs in order to reach the vocational objective; or

(b) A client cannot utilize publicly-supported schools because of his or her disability; or

(c) OVRs's financial participation in the plan is no greater than if the client had enrolled at the nearest appropriate publicly-supported school; or

(d) The net cost to Oregon governmental agencies is significantly less; or

(e) The training services for the client will be significantly delayed.

(3) Client Maintenance:

(a) Supplemental maintenance can be provided only when the client's maintenance costs are increased due to his or her involvement in evaluation of vocational potential (e.g., per diem essential to travel for diagnostic purposes) or a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses;

(b) Maintenance is not available during a period when planned services are interrupted (status 24);

(c) Any exceptions to subsection (3)(b) of this rule require Branch Manager approval prior to authorization.

(4) Clothing Purchases: Clothing purchases may be authorized if the need is a result of participation by the client in a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses. These must be appropriate in type and in a price range, comparable to clothing items normally used by persons engaged in similar rehabilitation, training or employment settings.

(5) Client/Applicant Transportation: travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a required vocational rehabilitation service. Assistance by the Office of Vocational Rehabilitation Services (OVRs) with transportation services will be subject to the following:

(a) Where local public transportation is available and can be used by the client, any reimbursement will not exceed the public transportation rate. Use of transportation costing in excess of the least expensive mode available to the client requires written justification, by the counselor, prior to authorization (e.g., disability prevents using the least costly mode);

(b) Where public transportation is not available or cannot be used by the client due to his/her disability, reimbursement may be authorized by the counselor for use of private vehicle or other appropriate forms of transportation;

(c) Only when determined by OVRs to be the most feasible means of providing for necessary client transportation for rehabilitation services may vehicle modification be authorized. Any vehicle modification must be prior approved by the local OVRs Field Office Manager, Field Operations Manager, or Administrator (or designee), depending on the expenditure level. Administrative level approval is obtained prior to authorizing any such costs in excess of \$5,000.00 per service; vehicle modifications are subject to OVRs established policies for purchasing authorization;

(d) The field counselor will inform the client that costs associated with insurance, repair and replacement are to be managed by the client after a modification is complete;

(e) It is the policy of OVRs to not purchase vehicles; however, the Administrator of the Office of Vocational Rehabilitation Services, or the Administrator's designee, may grant an exception and furnish payment of all or part of the purchase of a motor vehicle where the conditions in OAR 582-070-0025(2) are applicable.

(f) Whenever an exception is made by OVRs allowing payment toward the cost of a motor vehicle, OVRs will require that OVRs be shown as the primary lien holder until successful case closure has been achieved. Ownership is transferred to the client only if: (1) the vehicle is needed to participate in employment, and (2) there is a successful case closure. When client ownership is not justified based on these two criteria, the vehicle shall be repossessed and reassigned or otherwise disposed of by OVRs.

(6) Community Rehabilitation Programs' Services.

NOTE: Refer also to OAR 582-010.

(a) State-wide rates are intended to pay only the anticipated cost of standard rehabilitation services. This fee schedule may be adjusted for a specific CRP to reflect non-standard types or levels of service, or statewide for standard service, if a significant increase or decrease in the actual cost of serving clients occurs;

(b) For Community Rehabilitation Programs operated under private auspices, fees may be negotiated taking into consideration costs such as buildings, staffing and equipment. For publicly owned and operated Community Rehabilitation Programs (e.g., state or county owned or operated) fees, if any, must be based upon and not exceed actual costs.

(7) Extended Evaluation: Except for Placement Services, Placement Equipment, or Placement Services leading to Self-Employment, Extended Evaluation (of up to 18 months) may consist of any reasonable services essential to determining eligibility/ineligibility or extent and scope of needed services.

(8) Personal Care Assistance (PCA): Is provided only when necessary to allow client to benefit from other rehabilitation services, including evaluation:

(a) Client as Employer: The client, in most cases, as the employer of the PCA may be reimbursed for necessary PCA services required to participate in rehabilitation services;

(b) Third Party Vendor: Direct payment to the PCA vendor by OVRs requires prior approval by the Branch Manager;

(c) Written Contract: In most instances the client is to be the employer of his/her own personal care assistant. OVRs may assist the client to establish an appropriate written contract with the provider.

(9) Interpreter Service: Is provided only when necessary to assist the client to derive full benefit from other rehabilitation services:

(a) Limitation: To be provided by OVRs only when "comparable benefits" are not available;

ADMINISTRATIVE RULES

(b) For the Deaf and Hearing Impaired: OVRS gives preference to using interpreters certified by the National Registry of Interpreters for the Deaf and/or one who is on the approved vendor list of the State Association of the Deaf. When deemed mutually acceptable by the client and the counselor, another interpreter may be utilized;

(c) Regional Resources: The Deaf and Hearing Impaired Access Program may be used as a resource to both clients and staff for securing interpreters.

(10) Other Support Services Providers: May be selected for specific skills needed. Where provider licenses, insurance, certificates and state or local codes are indicated OVRS reasonably attempts to assure that appropriate levels are met before authorizing services from the provider. (See OAR 582-080 and 582-085 for additional rules on vendor selection.)

(11) Insurance: Providers shall obtain and maintain insurance as required by law for that provider; additionally, where OVRS is providing for services, appropriate levels of personal, automobile, professional and general liability insurance may be required, depending on the type of service.

(12) Occupational Licenses, Tools and Equipment for Training and/or Employment:

(a) May be provided when required for either extended evaluation or in other plan statuses, including post employment. OVRS accepts no responsibility for client lease/rental agreements or the leased/rented items other than to reimburse the client for such prior authorized expenditures;

(b) Repossessed items will be used whenever appropriate and available;

(c) Except for personally prescribed items, title/ownership of an OVRS purchased (or jointly purchased) item is held by OVRS (or jointly with OVRS) until case closure when ownership may be transferred to the client for non-expendable items deemed by OVRS to be needed for continued success in the client's program.

(13) Land and/or Stationary Buildings: Are never purchased by OVRS as a service to an individual client. Existing buildings may be modified when necessary to enable an eligible client to attain a vocational or independent living plan goal. No permanent additions or weight bear

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1996(Temp), f. 2-26-96, cert. ef. 3-1-96; VRS 1-2003, f. & cert. ef. 9-23-03; VRS 2-2003, f. & cert. ef. 12-31-03

580-080-0020

Standards for Selection of Vendors

The following standards supplement any other requirements that may apply to the same vendors. In all instances, the authorizing vocational rehabilitation counselor (with the guidance of the Field Services Manager) has the primary responsibility to assure that the vendor is currently on the OVRS approved vendor list. When there is no client preference or circumstances which would dictate otherwise, vendor choice will be made from the pool of approved vendors available in the community, moving consecutively through the list in alphabetical order:

(1) Licensed professional individuals — (physicians, dentists, pharmacists, psychologists, academic teachers, etc.). Licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. It is the responsibility of the vocational rehabilitation counselor to use only licensed individuals. If the vocational rehabilitation counselor has reason to believe that a professional vendor is not appropriately licensed, the counselor is to discontinue further use until the matter can be cleared by OVRS. For additional requirements specific to medical services providers refer to OAR 582-085-0010 through 582-085-0050 and 582-010-0005 through 582-010-0030.

(2) Service organizations — (hospitals, mental health clinics, child care facilities, placement agencies, group homes, foster homes, nursing homes, sheltered workshops, community rehabilitation programs, etc.). Service organizations must be qualified under state law or certified or accredited by a recognized state or national organization or be official arms of state or local government, and/or approved under the terms of OAR Chapter 582 for vendor selection. For all practicing groups of licensable, certifiable or other professionals, sections (1), (5), and (6) of this rule apply. For additional requirements pertaining to Community Rehabilitation Programs refer to OAR 582-010-0005 through 582-010-0030.

(3) Commercial vendors — (supplies or material goods, transportation, insurance, shipping, and other commercial services, etc.). Commercial vendors must conform to all applicable state licensing requirements. All purchases will be made in accordance with state purchasing policies. In addition, the vendor must be able to provide the requested goods and services at the levels of quantity and quality and in the required time period authorized by the vocational rehabilitation counselor.

(4) Training vendors — (universities, community colleges, proprietary schools and OJT trainers, and correspondence schools, etc.). Training vendors must conform to all applicable licensing requirements. Degree granting academic institutions must be accredited by a regional or national accrediting organization. Except when circumstances such as overall cost or specific need of a client justify otherwise, state-supported schools are used. OVRS conducts studies based on periodic sampling of training vendors to assure acceptable quality, reasonable costs, and effective results from the services provided. The studies may, on an annual basis, include a review of factors such as cost, utilization levels and rehabilitation survival rates for each community rehabilitation program or major training vendor used. OJT vendors will only be utilized if the vocational rehabilitation counselor and (as appropriate) the counselor's supervisor are assured in terms of their professional judgment, that the trainer/employer can deliver the training services as per the terms of the OJT contract.

(5) Certified professionals — (interpreters for the deaf, psychological and vocational counselors, occupational therapists, etc.). Certifiable professionals must possess a current certificate from a recognized state or national professional association or organization. If the vocational rehabilitation counselor questions the validity of the credentials, the counselor should refer the matter to the CRP Coordinator for guidance.

(6) Non-certified or non-licensed professionals — (e.g. tutors, peer mentors). In instances where a professional individual is not subject to licensing requirements or the OVRS approval process for providers of community rehabilitation services, the qualifications of the vendor must be determined to the satisfaction of the authorizing vocational rehabilitation counselor, the client and (as appropriate) the counselor's supervisor prior to the authorization of services; however, peer mentors must be approved by the CRP Coordinator prior to placement on the Approved Vendor List and are also required to meet ing partitions are to be erected as services to individuals the insurance requirements of OAR 582-010-0020(3)(b).

(14) Moving Expenses: May be provided for training or employment only when it has been determined by OVRS that it is less costly and/or more beneficial than having the client commute. OVRS retains the right to deny reimbursement for client opted commuting/moving costs in excess of the least costly alternative.

(15) Rehabilitation Technology Services (RTS): May be applied at any time during rehabilitation services to address barriers to the client's participation in evaluation, training, employment and, when appropriate, independent living:

(a) Approved Vendors: OVRS ensures that providers used by OVRS are qualified in the areas of engineering skills and/or technology required for a given service. Selected Community Rehabilitation Programs' Approvals may include RTS, when State Standards for Approvals are met for RTS;

(b) Authorization of: RTS is not conditioned upon unavailability of Comparable Benefits or Services, but all reasonably available comparable services shall be used before authorizing expenditure by OVRS. Personal services contracts for RTS require Branch Manager approval prior to implementation.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRS 2-2003, f. & cert. ef. 12-31-03

582-085-0020

Standards for Selection of Vendors

Selection and utilization of vendors shall be in accordance with the following standards that supplement any other requirements that may apply to the same vendors. In all instances, the authorizing individual has the primary responsibility to assure that vendor is currently on the OVRS approved vendor list:

(1) Licensed Professional Individuals — (physicians, psychologists, optometrists, and etc.); licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. If there is reason to believe that a professional vendor is not appropriately licensed, OVRS is to refrain from use until the matter can be cleared through the appropriate administrative unit.

(2) Medical service organization — (hospitals, medical groups, mental health clinics, etc.); service organizations must be licensed under state law or certified by a recognized state or national organization, and all employees providing medical services to the client/claimants of OVRS shall have appropriate professional licenses or certification.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91; VRS 2-2003, f. & cert. ef. 12-31-03

ADMINISTRATIVE RULES

Department of Justice Chapter 137

Adm. Order No.: DOJ 1-2004

Filed with Sec. of State: 1-2-2004

Certified to be Effective: 1-2-04

Notice Publication Date: 12-1-03

Rules Adopted: 137-040-0565

Rules Amended: 137-040-0017, 137-040-0500, 137-040-0510, 137-040-0520, 137-040-0550, 137-040-0560

Subject: An "energy savings performance contract" is a public contract between a public agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance. The adopted and amended rules under OAR Chapter 137, Division 40 are to be used by all public contracting agencies to govern the procedures for entering into energy savings performance contracts.

OAR 137-040-0017 was amended by temporary rule effective on August 1, 2003, to implement statutory changes in first-tier subcontractor disclosure applicable to certain competitively bid public improvement contracts. This model public contract rule amendment would make those temporary rule changes permanent, effective as of January 2, 2004.

Rules Coordinator: Carol Riches—(503) 378-6313

137-040-0017

Disclosure and Substitution of First-Tier Subcontractors

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Agency to exceed \$100,000, all Bidders shall submit to the Agency a disclosure form as described by this rule, identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Price, but at least \$15,000; or
- (b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline, and Bid Opening.** For each ITB to which this rule applies, the Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

- (b) Open Bids publicly immediately after the Bid Closing; and
- (c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, an Agency in its solicitation shall:

- (a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279.027(4); and
- (b) Provide instructions in a notice substantially similar to the following:

Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279.027). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract either in its bid submission, or within two hours after bid closing:

- 1) The subcontractor's name,
- 2) The category of work that the subcontractor would be performing, and
- 3) The dollar value of the subcontract.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

THE AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-040-0017)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279.027(3) and (4) and this rule is a matter of

Responsiveness. Bids which are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract award.

(6) **Agency Role.** Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279.027 and this rule. Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279.363. Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279.322. Agencies shall accept written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279.322(5), Agencies do not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279.323 regarding complaints to the Construction Contractors Board on improper substitution.

(8) **Effective Date.** The January 2, 2004, amendments to this rule shall apply to Public Improvement Contracts first advertised on or after August 1, 2003.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.027, 279.322, 279.323 & 279.363

Hist.: DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2001, f. & cert. ef. 1-17-01; DOJ 12-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; DOJ 1-2002, f. 3-18-02, cert. ef. 3-20-02; DOJ 8-2003(Temp), f. 7-31-03, cert. ef. 8-1-03 thru 1-1-04; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0500

Purpose

These 137-040-0500 to 137-040-0590 Oregon Administrative Rules are intended to provide guidance to Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by an Agency's Contract Review Authority under ORS 279.015(6)(a). Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, these 137-040-0500 to 137-040-0590 rules implement the requirements of ORS 279.015(4)(c) and (8) pertaining to the adoption of model rules appropriate for use by all public contracting Agencies to govern the procedures for entering into ESPCs. These 137-040-0500 to 137-040-0590 rules also implement statutory authority at ORS 279.015(1)(h), which allows limited negotiation when all Bids exceed an Agency's cost estimate. See OAR 137-040-0590.

Stat. Auth.: ORS 279.015, 279.049 & 351.086

Stats. Implemented: ORS 279.011, 279.015, 279.049 & 351.086

Hist.: DOJ 7-1998, f. & cert. ef. 10-6-98; DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2001, f. & cert. ef. 1-17-01; DOJ 1-2002, f. 3-18-02, cert. ef. 3-20-02; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0510

Definitions

In addition to those definitions at OAR 137-030-0000, the following definitions shall apply to these 137-040-0500 to 137-040-0590 rules, unless the context requires otherwise:

(1) **Alternative Contracting Methods.** Innovative techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of design-bid-build with award based solely on price (in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these 137-040-0500 to 137-040-0590 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under these 137-040-0500 to 137-040-0590 rules.

(2) **Construction Manager/General Contractor (or "CM/GC").** A form of contracting that results in a Public Improvement Contract for a Construction Manager to undertake design phase involvement; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Agency, architect/engineers and other consultants. Also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) **Design-Build.** A form of contracting that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Agency, and manages both design and construction. In this form of

ADMINISTRATIVE RULES

Contract, a single entity provides the Agency with all of the services necessary to both design and construct the project.

(4) **Energy Conservation Measures** (or "ECMs") (also known as "energy efficiency measures"). Any equipment, fixture or furnishing to be added or used in an existing building, structure or building/structure system, and any repair, alteration or improvement to an existing building, structure or building/structure system that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. Maintenance services are not Energy Conservation Measures, for purposes of these 137-040-0500 to 137-040-0590 rules.

(5) **Energy Savings Guarantee**. The energy savings and performance guarantee provided by the ESCO under an ESPC, which guarantees to the Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) **Energy Savings Performance Contract (or "ESPC")**. A public Contract between an Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) **Guaranteed Maximum Price (or "GMP")**. The total maximum price provided to the Agency by the Contractor, and accepted by the Agency, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

(8) **Measurement and Verification (or "M & V")**. The examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) **Project Development Plan**. A secondary phase of services performed by an ESCO in an ESPC when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the work; the term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the work.

(10) **Qualified Energy Service Company (or "ESCO")**. A company, firm or other legal entity with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) **Technical Energy Audit**. The initial phase of services to be performed by an ESCO in an ESPC that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Agency of the ESCO's findings during this initial phase of the work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the work.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.015, 279.011 & ORS 279.049

Hist.: DOJ 7-1998, f. & cert. ef. 10-6-98; DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2001, f. & cert. ef. 1-17-01; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0520

Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions**. ORS Chapter 279 requires a competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279.015 and any applicable Agency rules. Use of Alternative Contracting Methods may be directed by an Agency's Contract Review Authority as an exception to the prescribed public contracting practices in Oregon, and their use must be justified in accordance with the public contracting law and these 137-040-0500 to 137-040-0590 rules. See OAR 137-040-0530 regarding required Findings.

(2) **Energy Savings Performance Contracts**. Unlike other Alternative Contracting Methods covered by these 137-040-0500 to 137-040-0590 rules, ESPCs may be exempted from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279.015(4)(c) & (8), if the Agency complies with the procedures set forth in these 137-040-0500 to 137-040-0590 rules related to the solicitation, negotiation and contracting for ESPC services.

(3) **Post-Project Evaluation**. ORS 279.103 requires that the Agency prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Agency's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Director of DAS or the local Agency Contract Review Authority as applicable within 30 Days of the date the Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279.103 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption findings.

Stat. Auth.: ORS 279.015 & 279.049

Stats. Implemented: ORS 279.015, 279.049, 279.103 & 351.086

Hist.: DOJ 7-1998, f. & cert. ef. 10-6-98; DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2001, f. & cert. ef. 1-17-01; DOJ 1-2002, f. 3-18-02, cert. ef. 3-20-02; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0550

RFP Process

Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS Chapter 279 and divisions 30 and 40 of these Department of Justice rules, unless other applicable statutes control an Agency's use of competitive Proposals for Public Improvement Contracts. For ESPCs, the following RFP process shall be used, if an Agency wants the procurement process to be exempt from the competitive bidding requirements of ORS 279.015(1), pursuant to ORS 279.015(4)(c) & (8). The RFP process for the Alternative Contracting Methods identified in these 137-040-0500 to 137-040-0590 rules includes the following steps:

(1) **Proposal Evaluation**. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Agency's consideration of price-related factors, due to the fact that prices for the major components of the work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Agency. See ORS 279.023(1).

(2) **Evaluation Factors**.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

ADMINISTRATIVE RULES

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific entity that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the work and the ESCO's fee structure for all phases of the ESPC.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and these 137-040-0500 to 137-040-0590 rules, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 137-030-0010(3). Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the work, the scope of services to be performed by the ESCO during the Project Development Plan phase of the work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the work, consistent with the requirements of OAR 137-040-0565 below.

Stat. Auth.: ORS 279.015 & ORS 279.049

Stats. Implemented: ORS 279.015(4)(c), (6) & (8), 279.049 & ORS 351.1086

Hist.: DOJ 7-1998, f. & cert. ef. 10-6-98; DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2002, f. 3-18-02, cert. ef. 3-20-02; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0560

Design-Build

(1) **General.** The Design-Build form of contracting, as defined at OAR 137-040-0510(3), has technical complexities that are not readily apparent. Agencies shall only utilize this contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the Design-Build process, the Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "biddable" design, or where a design solution is still required (as in complex or phased projects); and

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-040-0500 to 137-040-0590 rules. See particularly OAR 137-040-0520 on "Use of Alternative Contracting Methods" and OAR 137-040-0565 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in OAR 137-040-0550(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279.057 for State Agencies is not applicable. See ORS 279.057(1) and 279.057(6).

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Agency shall require that the Design-Build Contractor disclose in its written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services, that are appurtenant to construction services.

(6) **Performance Security.** ORS 279.029(4)(b) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements.** Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) **Design Services.** The level or type of design services required must be clearly defined within the procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Agency, as well as requirements for professional liability insurance.

(c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) **Warranties.** The Contract shall clearly identify any express warranties made to the Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the Agency is benefited from such deliverables.

Stat. Auth.: ORS 279.015 & ORS 279.049

Stats. Implemented: ORS 279.015(4)(c), (6) & (8), 279.049, 279.057 & 351.1086

Hist.: DOJ 7-1998, f. & cert. ef. 10-6-98; DOJ 11-1999, f. 12-30-99, cert. ef. 1-1-00; DOJ 1-2001, f. & cert. ef. 1-17-01; DOJ 1-2002, f. 3-18-02, cert. ef. 3-20-02; DOJ 1-2004, f. & cert. ef. 1-2-04

137-040-0565

Energy Savings Performance Contracts

(1) **General.** These 137-040-0500 to 137-040-0590 rules include a limited, efficient method for public contracting agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279.015(1) for existing buildings or structures, but not for new construction. If an Agency chooses not to utilize the ESPC procurement method provided for by these 137-040-0500 to 137-040-0590 rules, the Agency may still enter

ADMINISTRATIVE RULES

into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279.015(2) & (3), or by otherwise complying with the procurement requirements applicable to any Agency not subject to all the requirements of ORS 279.015.

(2) **ESPC Contracting Method.** The ESPC form of contracting, as defined at OAR 137-040-0510(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Agency, as well as the additional technical complexities associated with a Design-Build Contract. Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority.** Public contracting Agencies wanting to pursue an exemption from the competitive bidding requirements of ORS 279.015(1), pursuant to ORS 279.015(4)(c) & (8) (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of these 137-040-0500 to 137-040-0590 rules.

(4) **No Findings.** An Agency is only required to comply with the ESPC contracting procedures set forth in these 137-040-0500 to 137-040-0590 rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279.015(1), pursuant to ORS 279.015(4)(c) & (8). No findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279.015(4)(c) & (8), unless the Agency is subject to the requirements of ORS 279.015(1) and chooses not to comply with the ESPC contracting procedures set forth in these 137-040-0500 to 137-040-0590 rules.

(5) **Selection.** ESPC selection criteria may include those factors set forth above in OAR 137-040-0550(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any entity providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such entity.

(6) **QBS Inapplicable.** Because the value of construction services predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279.057 is not applicable.

(7) **Licensing.** If the ESCO is not an Oregon licensed design professional, the Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services, that are appurtenant to construction services.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and payment bond (or a cashier's check or certified check accepted in lieu thereof) for not only the construction component of the full Contract Price, but also for those "design and related professional services" specified in the ESPC Design-Build Contract, pursuant to ORS 279.029(4). For ESPC Design-Build Contracts, these "design and related professional services" include conventional

design services, commissioning services, training services for the Agency's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any services associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279.029(4) "design and related professional services." Nevertheless, an Agency may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the Agency so provides in the RFP.

(9) **Contracting Requirements.** Public contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's work will include the following:

(i) The Technical Energy Audit phase of the work;

(ii) The Project Development Plan phase of the work;

(iii) A third phase of the work that constitutes a Design-Build Contract, during which the ESCO completes any plans and specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and

(iv) A final phase of the work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the services to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/energy Savings Guarantee period and the Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of work under the ESPC is restricted to implementation and installation of ECMs, as well as other work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of work for ESPCs resulting from a solicitation under these 137-040-0500 to 137-040-0590 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279.015 & ORS 279.049

Stats. Implemented: ORS 279.015(4)(c), (6) & (8), 279.049, 279.057 & 351.086

Hist.: DOJ 1-2004, f. & cert. ef. 1-2-04

Adm. Order No.: DOJ 2-2004

Filed with Sec. of State: 1-2-2004

Certified to be Effective: 1-5-04

Notice Publication Date: 11-1-03

ADMINISTRATIVE RULES

Rules Adopted: 137-055-3200, 137-055-3660, 137-055-4110, 137-055-4450, 137-055-5025, 137-055-5510

Rules Amended: 137-055-1020, 137-055-1160, 137-055-3220, 137-055-3360, 137-055-3400, 137-055-3420, 137-055-3440, 137-055-3490, 137-055-4060, 137-055-4080, 137-055-4100, 137-055-4120, 137-055-4130, 137-055-4160, 137-055-4180, 137-055-4440, 137-055-4520, 137-055-5020, 137-055-5040, 137-055-5110, 137-055-5220, 137-055-6020, 137-055-6025, 137-055-6110

Rules Repealed: 137-055-4140, 137-055-4200, 137-055-4220, 137-055-4240, 137-055-4260, 137-055-4280

Subject: Changes are being made to the above rules due to legislative implementation of House Bills 2110, 2111, 2113, 2114, 2274, 2277, 2332, 2645, 2646, 2711.

Rules Coordinator: Shawn Irish—(503) 986-6240

137-055-1020

Child Support Program Definitions

The following definitions shall apply to OAR 137-055-1000 through 137-055-7180, inclusive:

(1) Unless otherwise stated, “administrator” means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator’s or a district attorney’s authorized representative.

(2) “Assignee” means the Department of Human Services (DHS), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) “Assignment” or “Assigned” means all or a portion of support payments owed to a person will be retained by an assignee if such person or beneficiary of such person is receiving assistance in the form of Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed per OAR 137-055-6020. There is also an assignment of rights to medical support for reimbursement of health care costs for any person who has been granted medical assistance.

(4) “Beneficiary” means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court order, an administrative order, or a voluntary agreement.

(5) “Child Support Award” means a money award or administrative order that requires the payment of child support in installments. Prior to January 5, 2004, this was referred to as a money judgment.

(6) “Child Support Program” or “CSP” is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) “Class Order” means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) “Court Order” means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) “Court-ordered Amount”, or “COA”, means the periodic payment amount, usually monthly, ordered by administrative process or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) “Department of Human Services”, or “DHS”, is the state’s health and human services agency. DHS is responsible for public assistance programs such as: Temporary Assistance for Needy Families (TANF), Food Stamps, child-protective services, foster care and adoption programs, the Oregon Health Plan and Medicaid.

(11) “District Attorney”, or “DA”, means the district attorney for an Oregon county. In most Oregon counties, the DA is responsible for providing support enforcement services, when requested, on all support cases where no support is assigned to the state.

(12) “Division of Child Support”, or “DCS”, is the Division of Oregon’s Department of Justice that is responsible for:

(a) Establishing paternity, obtaining judgments for arrears, and for establishing and enforcing support obligations, on behalf of all children who:

(A) Are receiving or have formerly received TANF cash assistance, foster care, or OYA services, or who have support assigned to the State of Oregon;

(B) Are receiving TANF, or who have support assigned to another state, in cases where an obligor or alleged father resides or works in Oregon.; or

(C) Are under the enforcement jurisdiction of an Oregon county that has contracted its support enforcement responsibilities to DCS, in lieu of having the county District Attorney perform these responsibilities.

(b) Accounting and distribution of child support payments as the state disbursement unit.

(13) “Guidelines” refers to the guidelines, the formula, and related provisions established by DCS, in Oregon Administrative Rules 137-050-0320 through 137-050-0490, for determining child support award amounts in Oregon.

(14) “Income Withholding” means a judicial or administrative process under which an obligor’s employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and/or past-due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain exemptions provided by law.

(15) “IV-A” refers to Title IV-A of the Social Security Act which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see “TANF”). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity and/or a child support order, and/or obtain child support payments.

(16) “IV-D” refers to Title IV-D of the Social Security Act which requires each state to create a program to locate non-custodial parents, establish paternity, establish and enforce child support obligations, and collect and distribute support payments. Recipients of IV-A (TANF), IV-E (foster care) and Oregon Youth Authority (OYA) assistance are referred to their state’s IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the Federal Office of Child Support Enforcement.

(17) “IV-E” refers to Title IV-E of the Social Security Act which established a Federal-State program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E Foster Care programs is primarily from Federal sources.

(18) “Judgment Lien” means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(19) “Judgment Remedy” means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(20) “Money Award” means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(21) “Obligee” means any person to whom an obligor has been ordered (or has agreed) to pay child support, spousal support, alimony, and/or medical support, under an administrative order, court order, or voluntary agreement. The obligee is usually the custodial parent, or other designated person, having legal or physical custody of the beneficiary children under a support order.

(22) “Obligor” means any person who is required (or has agreed) to pay child support, spousal support, alimony, and/or medical support, under an administrative order, court order, or voluntary agreement. The obligor is usually the non-custodial parent of the beneficiary children under a support order.

(23) “Oregon Youth Authority”, or “OYA”, is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(24) “Support” means cash payments, health care coverage, or other benefits that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(25) “Support Arrearage Lien” means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(26) “Support Award” means a money award or administrative order that requires the payment of child or spousal support in installments.

(27) “Support Order” means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute

ADMINISTRATIVE RULES

to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A Support Order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(28) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low-income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(29) "Title XIX", popularly known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program.

Stat. Auth.: ORS 180.320-360; OL 2003, ch 576, § 1

Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-1160

Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) Pursuant to ORS 25.020, unless there is a finding of risk and order for nondisclosure of information as defined in subsection (2)(b) of this rule, any judgment or administrative order establishing paternity or that includes a provision concerning support must contain each party's:

- (a) Residence, mailing or contact address;
- (b) Social security number;
- (c) Telephone number;
- (d) Driver's license number; and
- (e) Employers' name, address and telephone number.

(2) For the purposes of this rule the following definitions shall apply:

(a) A claim of risk for nondisclosure of information means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in section (1) of this rule because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) A finding of risk and order for nondisclosure of information means a finding by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in section (1) of this rule because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(3) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information shall be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator shall provide parties an opportunity to make a claim of risk for nondisclosure of information.

(4) The administrator shall make a finding of risk and order for nondisclosure of information when a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (3) of this rule unless the party does not provide an address of record pursuant to section (6) of this rule.

(5) An administrative law judge shall make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide an address of record pursuant to section (6) of this rule.

(6) A party who makes a claim of risk for nondisclosure of information must provide an address of record that is releasable to the other party in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator shall have a place in which to list an address of record. If a requesting party does not provide an address of record, a finding of risk and order for nondisclosure of information shall not be made.

(7) When a finding of risk and order for nondisclosure of information has been made, the administrator shall ensure that all pleadings, returns of service, orders or any other documents that would be sent to both parties or

would be available as public information in a court file shall not contain or shall have deleted any of the identifying information specified in section (1) of this rule. Any document sent to the court that contains any of the information specified in section (1) of this rule shall be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents.

(8) A finding of risk and order for nondisclosure of information shall be documented on the child support case file and shall remain in force until such time as a party who requested a claim of risk may retract the claim in writing.

(9) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(10) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator shall advise the requestor that previously protected information may be released to the other party(ies).

(11) In cases where the administrator is not involved in the preparation of the order, any claim of risk for nondisclosure of information pursuant to ORS 25.020 shall be made to the court.

(12) Where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services, the administrator shall implement the court's finding pursuant to this rule. In such a case, if the party fails to provide an address of record within 30 days of a written request from the administrator, the administrator shall use, in order of preference, the party's mailing, contact or residence address as the address of record. The written request from the administrator must advise the party that if no address of record is provided within 30 days, the administrator will use the party's mailing, contact or resident address as the address of record, and the new address of record may be released to the other party(ies).

Stat. Auth.: ORS 25.020; ORS 180.320-360

Stats. Implemented: ORS 25.020

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3200

Pending Judicial Proceedings and Existing Support Orders

(1) Whenever the administrator seeks to establish or modify a support order, the administrator shall first check the Oregon Judicial Information Network (OJIN) and the Child Support case records to determine whether:

(a) There is any support proceeding involving the child(ren) pending in this state or any other jurisdiction; and

(b) There is a support order involving the child(ren) in this state or any other jurisdiction, other than the support obligation the administrator seeks to modify.

(2) If a judicial proceeding involving the support of the child(ren) is pending in this state, the administrator may proceed to establish or modify the support order if:

(a) It appears likely that a final judgment will not be entered without substantial delay; or

(b) The state's financial interests cannot be adequately protected without proceeding with the administrative action.

(3) If the administrator proceeds to establish or modify a support order, the administrator shall file a notice in the pending judicial proceeding which includes the date of initiation of the administrative action, the action(s) being pursued, and the amount of any current or past support sought.

(4) If the administrator does not proceed to establish or modify a support order, the administrator shall send notice to the requesting party and may file an affidavit of appearance in the pending proceeding.

(5) Notwithstanding the provisions of OAR 137-055-3360, if the pending proceeding is in this state, the administrator shall file any judgment resulting from an action taken pursuant to section (2) in the county where the proceeding is pending under the pending circuit court case number.

(6) If a support proceeding is discovered after commencing an administrative action but prior to finalizing the administrative order, the administrator may:

(a) Certify all matters under the notice to the court for consolidation in the court proceeding;

(b) Finalize any portion of the order and file it in the county where the proceeding is pending; or

(c) Withdraw the administrative proceeding.

ADMINISTRATIVE RULES

(7) If a child support judgment is discovered after commencing an administrative action but prior to finalizing the administrative order, the administrator may:

(a) Seek to set aside the provisions of the child support judgment and ask the court to enter a new order if:

(A) It was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed; or

(B) It was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the state's interests were not adequately protected.

(b) Proceed to establish an order for past support only for periods of time not addressed by the child support judgment; or

(c) Withdraw the administrative proceeding.

Stat. Auth.: ORS 25.287; ORS 416.422

Stats. Implemented: ORS 25.287; 108.110; 109.100; 109.103; 416.415; 416.422; 416.425; 416.440; 416.470; 419B.400; 419C.590

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3220

Establishment of Past Support Orders

(1) For purposes of this rule the following definitions shall apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child(ren).

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in OAR 137-050-0320 through 137-050-0490.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child(ren) during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support shall be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment shall be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It shall be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If either party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any state by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another state, the date of application for services shall be considered to be either:

(a) The date the initiating state requests past support to begin but not before October 1, 1995; or

(b) If the initiating state requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating state does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator shall not establish past support prior to the date of the most recent initiation of CSP services. If an initiating state requests that past support be established for two or more periods of time, past support shall be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any state for the non-custodial parent to pay support to the obligee for the same child(ren), no order for past support shall be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another state, the administrator shall not enter an order for past support for a period of less than four months.

(12) Past support shall be calculated per the Oregon Child Support Guidelines and shall use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.320-360

Stats. Implemented: ORS 416.422

Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3360

Entering of Administrative Orders in the Register of the Circuit Court

An administrative order under ORS 416.400 to 416.470 must be entered in accordance with the requirements of this rule:

(1) If the administrative order establishes support or paternity and the child is not residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417), the order must be entered in the circuit court in the county in which the child, or either parent of the child, resides.

(2) If the administrative order establishes support or paternity and the child is residing in a state financed or supported residence, shelter or other facility or institution (see ORS 416.417) or resides out of state, the order must be entered in the circuit court in the county in which the obligor resides.

(3) If the administrative order is one that modifies an underlying judicial order or if there is any previous Oregon order entered in circuit court, the order must be entered in the circuit court in the same county as the underlying judicial order.

(4) If there is a judicial proceeding pending at the time of finalizing the administrative order, the order must be entered in the circuit court in the same county as the pending judicial proceeding and must be entered under the pending court case number.

(5) Notwithstanding any other provision of this rule, nothing in this rule precludes filing liens in other Oregon counties pursuant to ORS 18.320 or transferring judgments pursuant to ORS 25.100 or 107.449.

Stat. Auth.: ORS 180.320-360 & ORS 416.455

Stats. Implemented: ORS 416.440

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1091; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3360; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3400

District Attorney Case Assignment for Modification or Suspension of Support

(1) The purpose of this rule is to provide criteria for determining which Oregon District Attorney shall have responsibility for initiating action to review and modify an Oregon judgment, or administrative order, that requires payment of child support. This rule applies only when both of the following conditions exist:

(a) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(b) Either of the following is true:

(A) The obligor or obligee has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(B) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(2) For purposes of this rule, the following definitions apply:

ADMINISTRATIVE RULES

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be either the obligor or the obligee;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 shall be considered the "requesting party";

(b) "Non-requesting party" means whichever party, either the obligor or the obligee, that is not the requesting party as defined in (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2040 for enforcing the case shall, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If both the obligor and obligee reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the obligor and obligee shall be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If either the obligor or obligee reside in the same Oregon county that is the county of the support order, the district attorney for that county shall be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county shall be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney shall refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order shall then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county shall transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order shall then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order shall transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator shall advise the requesting party to direct the request to the child support program in that other state. The other state's child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another state, the administrator shall handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party does not reside in Oregon, the district attorney shall handle the request under sections (3) and (4) of this rule.

(7) The Matrix set out in Table 1, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See ED. NOTE.]

(8) All functions and responsibilities assigned to Oregon District Attorneys under this rule shall also be considered assigned to the Division of Child Support (DCS), for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 180.320-360

Stats. Implemented: ORS 25.080, ORS 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3420

Periodic and Substantial Change in Circumstance Review and Modification of Child Support Award Amounts

(1) For the purposes of this rule, the following definitions shall apply:

(a) "Determination" means an order resulting from a periodic review which finds that the current order of support is in "substantial compliance" with the Oregon guidelines.

(b) "Guidelines" means the guidelines, the formula, and related provisions in OAR 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through medical insurance coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program shall notify annually the obligor and obligee of their right to request a review of the amount of support ordered.

(3) The purpose of such review is to determine whether the current child support order should be modified to assure substantial compliance with Oregon's child support guidelines.

(4) Such review shall consist of seeking information from all parties and from searching computerized records and other sources as appropriate. The administrator may use a court or administrative hearing process or discovery process in conducting the review, when necessary, to obtain adequate evidence or sworn testimony from any party in order to complete the review.

(5) Unless there is a current assignment of support rights and the Department of Human Services or the Division of Child Support has determined that a review would not be in the best interests of the child, which is defined as "good cause" in accordance with OAR 461-120-0350, the administrator shall, on the request of any party, initiate a periodic review no sooner than 24 months after the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted. Notwithstanding this section, a review may be conducted based upon a change of circumstances sooner than 24 months pursuant to section (10) of this rule.

(6) The administrator shall complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 calendar days of receiving a written request for a review, or locating the non-requesting parent, if necessary, whichever occurs later. For a change of circumstances modification, a written request means the requesting party has provided the documentation specified in subsection (10)(d) of this rule. For a periodic review, a written request means any written request from a party.

(7) The administrator is responsible for conducting a review in this state or for requesting that another state conduct a review. Pursuant to the provisions of ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(8) Within 15 calendar days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator shall determine in which state the review will be sought. The administrator is limited by the interstate provisions of ORS 110.300 through 110.441 in making this determination, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon shall be the reviewing state.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon shall be the reviewing state.

(c) If the child or a party is subject to the personal jurisdiction of this state and all the parties have filed a written consent in the state which issued the order for the Oregon tribunal to modify the order, Oregon shall be the reviewing state.

(d) If the administrator has registered another state's order for enforcement and none of the parties or the child resides in the state which issued the order, the resident state of the non-requesting party shall be the reviewing state.

(9) If none of the conditions in sections (8)(a) through (8)(c) of this rule apply and the administrator determines that the reviewing state is not Oregon, it shall proceed to:

(a) Determine and obtain the information needed by the reviewing state to permit review;

(b) Complete the federal, standardized interstate transmittal form;

(c) Transmit the documents in paragraphs (a) and (b) of this subsection within 20 calendar days of receipt of those documents to the reviewing state;

(d) If the reviewing state is currently providing interstate services for Oregon on this case, the documents shall be transmitted to the local office or agency working the case; and

ADMINISTRATIVE RULES

(e) If the request is the first contact with the reviewing state on this case, the request must be sent to the interstate central registry in the reviewing state.

(10) The administrator shall conduct a review based upon a change of circumstances request for modification only when:

(a) Oregon has jurisdiction to modify;

(b) The existing support order was entered not less than 60 days prior to the date the administrator receives a request for modification services based upon a change of circumstances, except for those cases where a change of custody is the reason for the change in circumstance modification;

(c) At least one of the following criteria are met:

(A) A change in the physical custody of the child(ren) has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veteran's benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) The obligated parent has been incarcerated after the current order was entered, as defined in and pursuant to OAR 137-055-3300; or

(F) The needs of the child have changed; and

(d) The requesting party:

(A) Completes a request for modification based upon a change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(e) If the conditions in section (10)(a) through (10)(d) of this rule have not been met or the presumed correct child support amount under the child support guidelines calculated as the result of a review indicates that the current support order is in substantial compliance, the administrator shall notify the requesting party in writing within 30 days that:

(A) The administrator denies the request for the filing of a motion for modification; and

(B) The party may use a motion for modification as provided for in ORS 416.425. The administrator shall advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(11) If a request for review is received because a change in the physical custody of the child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

(12) Upon receipt of a written request for a review, the administrator shall notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice shall advise the obligor and obligee:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator shall consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator shall not conduct a review or calculate a presumed correct child support amount until 30 days has elapsed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have elapsed; and

(d) That a modification to the support amount shall effect only support owing on or after the date of filing of the determination or motion.

(13) Based upon a periodic review, the administrator shall notify the obligor and obligee in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Shall advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(c) If the administrator uses an administrative determination or motion form, the administrator shall include the request for hearing form for each of the parties.

(14) Based upon a review conducted for a change of circumstances, subject to the conditions set out in section (10) of this rule, the administrator shall:

(a) Notify the requesting party as specified in subsection (10)(e) of this rule if the presumed correct support amount under the child support guidelines is in substantial compliance with the current support order; or

(b) If the current child support amount is not in substantial compliance with the child support guidelines, notify the obligor and obligee in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Shall be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Shall advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) If the administrator uses an administrative motion form, the administrator shall include the request for hearing form for each of the parties.

(15) If a party wishes to object to the proposed determination or modification:

(a) The party shall file a written request for hearing with the administrator or court before the 30 day period has elapsed; and

(b) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator shall:

(A) Review the case to determine whether an error was made in applying the guidelines or computing the support amount and, if so, notify both parties of the new presumed amount;

(B) Seek a consent order; or

(C) Ensure that the matter is set for hearing if no other resolution is achieved.

(16) If no request for hearing is filed within the 30 day period, the administrator shall cause to be entered in the court register the appropriate determination or modification of the support order.

(17) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge shall enter a modified order with the support amount that does comply with the guidelines.

(18) An order of the administrative law judge may be appealed to the circuit court of the county in which the support order has been entered, docketed or registered for a hearing de novo. The appeal to the court shall be by petition for review filed within 60 days after the order of the administrative law judge has been entered in the court register.

(19) No provision of this rule shall preclude the obligee or obligor from utilizing the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 416.455 & ORS 180.320-360

Stats. Implemented: ORS 25.080, 25.287, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3440

Effective Date of Modification Under ORS 416.425

(1) In any proceeding to modify a support order under ORS 416.425, the modification may be effective on or at any time after the nonrequesting party is served with a motion to set aside, alter or modify the judgment.

(2) If a motion to set aside, alter or modify a judgment is served on more than one nonrequesting party, the modification may be effective on or at any time after the last nonrequesting party is served.

(3) For purposes of this rule nonrequesting party is an individual obligee or an obligor under the child support order.

(4) If an amended motion is initiated and served on the parties, the effective date may be the date the original motion was served on the nonrequesting party.

(5) This rule applies to any modification finalized after January 5, 2004.

Stat. Auth.: ORS 107.135, 180.320-360 & ORS 416.455

Stats. Implemented: ORS 416.425

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1080; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

ADMINISTRATIVE RULES

137-055-3490

Suspension of Enforcement

(1) For purposes of this rule, "credit balance" means that payments received on a support account exceed all amounts owed by the obligor for ongoing and past-due support.

(2) When a motion has been filed to terminate, vacate, or set aside a support order or when a motion has been filed to modify a support order because of a change in physical custody of the child, the administrator may suspend enforcement of the support order if:

(a) Collection of support would result in the support account accruing a credit balance if the motion were granted; and

(b) The obligee does not object to suspending enforcement of the support order.

(3) When enforcement is to be suspended under this section, the administrator shall send written notice of the proposed suspension to the obligee and shall send a copy of the notice to the obligor;

(4) The notice shall advise the obligee that the obligee has 14 days from the date the notice is sent to object in writing to the proposed suspension of enforcement and to give the reason(s) for the objection.

(a) If the suspension is due to a motion to terminate, vacate or set aside a support order, the obligee may object only on the basis that a credit balance would not result if the motion were granted.

(b) If the suspension is due to a motion to modify the support order because of a change in physical custody, the obligee may object only on the basis that:

(A) The child(ren) is/are not in the physical custody of the obligor;

(B) The child(ren) is/are in the custody of the obligor without the consent of the obligee or without a court order for legal custody; or

(C) A credit balance would not result if the motion were granted.

(D) When an obligee files a written objection under this subsection, the administrator shall not suspend enforcement. However, if the obligee's written objection results in the obligor accruing a credit balance, the provisions of OAR 137-055-6260 shall apply. In addition, the obligee may incur an overpayment under OAR 137-055-6220.

Stat. Auth.: ORS 25.125, ORS 180.320-360

Stats. Implemented: ORS 25.125(6)

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0069; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3490; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3490; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-3660

Multiple Child Support Judgments

(1) When the administrator finds that two or more child support judgments exist involving the same obligor and child for the same time period and each judgment was issued in this state, the administrator may:

(a) Issue a proposed governing child support order, as defined in ORS 25.010;

(b) Petition the court in the county where a child who is subject to the judgment resides for a governing child support judgment; or

(c) Move to set aside any one of the support judgments if the judgment was entered in error.

(2) For purposes of a governing child support proceeding, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and supersede contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about monetary support for the benefit of the child, the monetary support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about health care coverage for the benefit of the child, the health care coverage terms of an earlier-issued child support judgment continue.

(3) The presumption may be rebutted if the last issued child support judgment:

(a) Should be set aside under the provisions of ORCP 71;

(b) Was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed;

(c) Was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment; or

(d) Was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the state's interests were not adequately protected.

(4) The administrator may issue a proposed governing child support order as provided in subsection (1)(a), only if the presumption in section (2) is applied.

(5) When determining which support judgment was the "last-issued" for purposes of determining a governing child support judgment, the issue date for any support judgment shall be:

(a) The date the support judgment was entered into the circuit court register; or

(b) If the support judgment is an administrative modification of a court judgment the date the order approving the modification was entered into the circuit court register.

(6) When the court issues a governing child support judgment or when an administrative governing child support order is approved by the court, the noncontrolling terms of each earlier child support judgment regarding monetary support or health care coverage are terminated. However, the issuance of the governing child support judgment does not affect any support payment arrearage or any liability related to health care coverage that has accrued under a child support judgment before the governing child support judgment is issued.

(7) A proposed governing child support order or petition for governing child support judgment shall include:

(a) A reconciliation of any monetary support arrears or credits for overpayments under all of the child support judgments; or

(b) An order or motion to reconcile any monetary support arrears or credits for overpayments under all of the child support judgments in a separate proceeding under ORS 25.167 or 416.429.

(8) When reconciling any monetary support arrears or credits for overpayments under all of the child support judgments included in the governing child support proceeding for time periods prior to entry of a governing child support judgment:

(a) The obligor is expected to pay the total amount of current support due under the highest judgment; and

(b) Payment made toward any one of the judgments must be credited against the obligation owed under the others.

(9) For purposes of this rule, "Support Judgment" means an administrative order for child support that has been entered into the circuit court register under ORS 416.440 or a judgment of the court for child support.

Stat. Auth.: OL 2003, ch 146, § 5

Stats. Implemented: ORS 25.164, 25.167 & 416.422

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4060

Income Withholding — General Provisions, Requirements and Definitions

(1) OAR 137-055-4060 through 137-055-4280 shall provide for collection of support by means of income withholding, in accordance with ORS 25.372 through 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OAR 137-055-4060 through 137-055-4280 and as used in ORS 25.372 through 25.427, the following definitions shall apply:

(a) "Alternative payment method" means the methods of paying support that are described in OAR 137-055-4120;

(b) "Best interests of the child" means the method of payment likely to produce consistent support which will reach the child(ren) in the most expedient manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in subsections (B) or (C) of this section.

(A) Amounts required to be withheld by law includes, but is not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following shall not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and DCS shall not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee;

(d) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not pre-

ADMINISTRATIVE RULES

viously become subject to initiated income withholding under the existing order.

(e) "Periodic recurring income" as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is received at least monthly on a regular basis.

(3) All support orders issued or modified by the administrator shall include a provision requiring the obligor to keep the administrator informed of:

- (a) The name and address of the obligor's current employer;
- (b) Whether or not the obligor has access to health insurance coverage at reasonable cost, and if so, the health insurance policy information.

Stat. Auth.: ORS 25.427, ORS 180.320-360

Stats. Implemented: ORS 25.372-25.427, 656.234, 657.780 & 657.855

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1990, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4060; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4080

Immediate Income Withholding

(1) When the obligor is subject to a support order entered, modified, or registered in Oregon on or after October 1, 1989, the income of the obligor shall be subject to immediate income withholding on the effective date of the order, regardless of whether support payments by the parent are in arrears, except that such income shall not be subject to withholding in any case where:

(a) A court or the administrator makes a written finding and explanation that there is good cause not to require the withholding;

(A) A good cause finding must include a finding that immediate income withholding would not be in the best interests of the child; and

(B) There is proof of timely payments.

(b) The obligor and the obligee agree in writing to an alternative payment method as provided in OAR 137-055-4120; or

(c) Child support is accruing while the child is in the custody of DHS or the Oregon Youth Authority as provided in ORS 416.417 and the obligor has requested an alternative payment method in writing.

(2) An exception to immediate withholding under section (1) above may only be granted if:

(a) No arrears are owed on the case;

(b) The obligor has complied with the terms of any previously allowed exception to withholding; and

(c) When money is owed to the state under the support order, the state agrees in writing to the alternative payment method.

Stat. Auth.: ORS 25.396, ORS 180.320-360 & ORS 25.427

Stats. Implemented: ORS 25.378 & ORS 25.396

Hist.: AFS 7-1994, f. & cert. ef. 4-1-94; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 34-1995, f. 11-27-95, cert. ef. 12-1-95; AFS 39-1995, f. & cert. ef. 12-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0176; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4080; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4100

Initiated Income Withholding

(1) On any support order entered or registered in Oregon in which the obligor is not subject to immediate income withholding, including those cases where an exception has been granted pursuant to OAR 137-055-4080, the obligor shall become subject to income withholding on:

(a) The date on which the payments which the obligor has failed to make under a support order are at least equal to the support payable for one month;

(b) The date on which the obligor requests that withholding begin; or

(c) The date on which the obligee requests that withholding begin if:

(A) The court or enforcing agency makes a finding that withholding would be in the best interests of the child(ren), as defined in OAR 137-055-4060; and

(B) 14 days advance written notice and opportunity to object has been given to the obligor.

(2) Except as provided in subsection (1)(c), the income of the obligor shall become subject to income withholding without the need for a judicial or administrative hearing or for advance notice to the obligor.

(3) Pursuant to subsection (1)(c) of this rule, if the obligor has been granted an exception to withholding by a court, the holder of support rights who wants withholding must apply for withholding under this section by motion to the court.

Stat. Auth.: ORS 25.396, 25.427, 180.320-360

Stats. Implemented: ORS 25.378, ORS 25.396, ORS 656.234 & ORS 657.780

Hist.: AFS 62-1985(Temp), f. & ef. 10-28-85; AFS 30-1986, f. & ef. 4-1-86; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; Renumbered from 461-035-0049; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1990, f. 12-13-90, cert. ef. 1-1-91; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0177; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4100; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4110

Termination of Income Withholding

On any case in which an income withholding order has been issued, the administrator shall terminate withholding when:

(1) There is no longer a current order for support and all arrears have been paid or satisfied;

(2) The court or administrator makes a written finding and explanation that there is good cause not to require withholding consistent with OAR 137-055-4080(1).

(3) The obligor and obligee agree in writing to an alternative payment method as provided in OAR 137-055-4120; or

(4) The child is in the custody of DHS or the Oregon Youth Authority and the obligor has requested an alternative payment method in writing.

(5) An exception to initiated withholding under sections (3) or (4) above may only be granted if:

(a) No arrears are owed on the case;

(b) The obligor has complied with the terms of any previously allowed exception to withholding; and

(c) When money is owed to the state under the support order, the state agrees in writing to the alternative payment method.

Stat. Authority: ORS 25.396

Stats. Implemented: ORS 25.396

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4120

Alternative Payment Method

(1) If an exception to income withholding has been granted when support is accruing because the child(ren) is in the custody of DHS or OYA as provided in ORS 416.417, an alternative payment method may be any method of paying support allowable pursuant to OAR 137-055-5020, except electronic payment withdrawal (EPW).

(2) Except as provided in section (1), for all cases receiving support enforcement services under ORS 25.080, the only alternative method of paying support to income withholding is through electronic payment withdrawal from the obligor's bank account as described in OAR 137-055-5020.

(3) The administrator shall allow payment by EPW if:

(a) The obligor qualifies for an exception to income withholding as provided in OAR 137-050-4080 or 137-050-4110;

(b) The obligor submits a completed application for EPW;

(c) The obligee consents to payment by EPW; and

(d) The obligor continues to pay the amount due for current support each month until DCS activates the EPW payment method on the case.

(4) The administrator will not continue to forward a request for consent to the obligee if the obligee has failed to consent at any time within the previous six months.

(5) An alternative payment method shall remain in effect:

(a) Regardless of any subsequent modifications to the child support order, provided the obligor pays off any arrears resulting from the modification within 30 days of when the administrator codes the modification onto the case record, unless a court orders otherwise.

(b) Until the case qualifies for initiated income withholding as provided in OAR 137-055-4100, including cases where the arrears result because the obligor's financial institution refuses to honor an EPW payment, when presented for payment by DCS, due to insufficient funds in the obligor's account.

Stat. Auth.: ORS 25.396, ORS 25.427, ORS 180.320-360

Stats. Implemented: ORS 25.396

Hist.: AFS 24-1991, f. 11-26-91, cert. ef. 12-1-91; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 30-1994, f. 12-29-95, cert. ef. 1-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0178; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4120; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4130

Reduced Income Withholding When Support Assigned to State

(1) Notwithstanding the provisions of ORS 25.414, the Department of Justice may set a lesser amount to be withheld if:

(a) Withholding is only for arrearage assigned to this or another state and the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support; or

ADMINISTRATIVE RULES

(b) The child(ren) is/are currently in paid state care or custody and the state and the obligor agree in writing to a reduced amount of withholding when there is evidence that:

(A) The order to withhold is a barrier to reunification of the family or rehabilitation of the youth; or

(B) Is prejudicial to the obligor's ability to provide for another child the obligor has a duty to support.

(2) When the child(ren) is/are currently in paid state care or custody, DCS may submit an agreement for reduced income withholding to the Department of Human Services (DHS) child welfare program or the Oregon Youth Authority (OYA) for approval or denial.

(3) Upon receiving notice of an approval or denial of an agreement, DCS will notify the obligor. If the DHS child welfare program or OYA do not respond within 30 days of receiving an agreement, the agreement shall be deemed denied.

(a) If the agreement is approved, the agreement does not take effect until it has been signed by the obligor and returned to DCS.

(b) If the obligor does not agree with the agency's denial of an agreement, the obligor may file a grievance with the DHS child welfare program or OYA pursuant to OAR 413-010-0450 or 416-100-0020.

(4) A written agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

(a) The child(ren) leave(s) the care or custody of the state agency to which support has been assigned;

(b) According to the case record or as notified by the DHS child welfare program or OYA, the obligor is out of compliance with the agreement; or

(c) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.396, ORS 180.320-360

Stats. Implemented: ORS 25.396

Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4160

Contested Income Withholding

(1) The only basis for contesting an order to withhold is a mistake of fact. A mistake of fact means either:

(a) An error in the amount due for current support or for arrears;

(b) An error in the identity of the obligor; or

(c) The order was entered prior to October 1, 1989, and does not include the immediate income withholding language.

(2) Payment of all arrears shall not, by itself, be a basis for not implementing withholding.

(3) If the obligor is contesting the withholding on the basis of an error in the amount due for current support or arrears pursuant to subsection (1)(a) of this rule, the obligor's contest must be in writing. The process for contesting a withholding shall be as described in ORS 25.405.

(4) Both the obligor and obligee shall be notified of the administrator's determination and of the right to appeal the determination.

(5) If an obligor contests an order to withhold issued by the administrator DCS shall hold any funds collected pursuant to the withholding order, and shall not distribute such funds to the obligee, subject to the following:

(a) If the obligor contests the withholding on the basis of an error in the identity of the obligor, DCS shall hold all payments collected pursuant to the withholding order until the administrator has made its determination;

(b) If the obligor contests the withholding on the basis of an error in the amount due for current and/or past-due support, DCS shall hold all payments collected for past-due support pursuant to the withholding order, except for those amounts the obligor does not contest are owed, until the administrator has made its determination;

(c) Once the administrator has made its determination, and regardless of whether or not the determination is appealed to the court, DCS shall:

(A) Refund, to the obligor, all amounts so held that are determined to have been collected in error;

(B) Disburse, to the obligee or as otherwise appropriate, all amounts so held that are determined to have been collected correctly.

(6) Neither the initiation of proceedings to contest an order to withhold pursuant to this rule, nor a motion or request to contest an order to withhold, nor an appeal of the decision of the administrator with regard to the obligor's contesting of the order to withhold, shall stay, postpone, or defer ongoing withholding unless otherwise ordered by a court.

Stat. Auth.: ORS 25.427, ORS 180.320-360

Stats. Implemented: ORS 25.405

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0181; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4180

Order to Withhold Income

(1) On any support case being enforced under ORS 25.080, the administrator shall serve an order to withhold income upon the appropriate withholder whenever:

(a) The obligor is subject to immediate income withholding and no exception to withholding has been granted, pursuant to OAR 137-055-4080; or

(b) The obligor is subject to initiated income withholding.

(2) If no payment is received from the withholder within 46 days of the date of Order to Withhold Income, the Child Support Enforcement Automated System (CSEAS) will notify the administrator. The administrator shall then take the following additional action to assure compliance with the Order to Withhold Income:

(a) Telephone or write to the withholder and seek a commitment as to when the withholder will forward payment;

(b) Determine if the employer should be held liable for failure to withhold, pursuant to ORS 25.424.

Stat. Auth.: ORS 25.427, ORS 180.320-360

Stats. Implemented: ORS 25.378, ORS 25.402 & ORS 25.424

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 22-1993, f. 10-15-93, cert. ef. 11-1-93; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 7-1995, f. 3-27-95, cert. ef. 4-1-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0183; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4180; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4440

Liens Against Personal and Real Property

(1) A judgment for support constitutes a lien on real and personal property as provided for in Oregon law.

(2) Whenever there is a judgment for unpaid support and the administrator learns that an obligor has assets, then the administrator may cause a lien to be recorded on any real or personal property owned by the obligor or unless the property is exempt from lien laws under Oregon law. Upon filing the notice of claim of lien, the administrator shall send a copy of the notice to the property owner by certified mail and to the obligee by regular mail.

(3) An obligee from another state with a judgment for unpaid support may record a lien under the provisions of ORS 18.320, and shall use the form provided by the Office of Child Support Enforcement of the United States Department of Health and Human Services.

(4) Pursuant to OAR 137-055-4300(3), the administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator shall prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources. Prior to forcing a sale of real or personal property, the administrator must consider the following factors:

(a) The market value of the property after subtracting the value of superior claims of senior lien holders;

(b) The market conditions for achieving maximum return;

(c) The long-term impact on the obligor's ability to comply with an unsatisfied or future support duty;

(d) The storage costs, notice and sale costs;

(e) Exemption claims;

(f) Co-ownership of the property, or impact on any existing trust on the property; and

(g) The availability of other, more effective remedies to satisfy the support debt.

(5) The administrator shall not proceed with this enforcement option when a court of appropriate jurisdiction has ordered that the obligor be exempted from referral. The obligor must notify the obligee and the administrator when filing a claim for an exemption with a court.

Stat. Auth.: ORS 180.320-360, Sec. 2, ch. 73 OL 2003

Stats. Implemented: ORS 18.320, 25.670 & ORS 25.690

Hist.: AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0235; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4450

Expiration and Release of Judgment Liens

(1) When a judgment of the court or administrative order containing a money or support award is filed with the court administrator, it creates a judgment lien on all property owned by the obligor in the county where it is filed.

(a) A money award for past support will attach to all real property of the judgment debtor immediately upon entry of the judgment.

ADMINISTRATIVE RULES

(b) A support award will not attach until it becomes an unpaid installment pursuant to section 2 of this rule.

(2) When an installment becomes due under the terms of a support award and is not paid a support arrearage lien attaches:

(a) To all real property of the judgment debtor in the county where the judgment is filed; and

(b) To any property acquired in that county by the judgment debtor after that date.

(3) A support arrearage lien remains attached to real property until:

(a) The judgment lien expires; or

(b) The judgment lien is released for a single piece of real property or all real property of the judgment debtor in that county; or

(c) Satisfaction is made for the unpaid installment(s).

(4) A judgment lien created as a result of a child support or money award for unpaid child support installments expires:

(a) 25 years after entry of the judgment that first establishes the support obligation if the judgment was entered on or after January 1, 1994.

(b) 10 years after entry of the judgment that first establishes the support obligation if the judgment was entered before January 1, 1994, and was not renewed under the law in effect prior to January 1, 2004.

(5) A judgment lien created as a result of a support award for spousal support expires:

(a) 25 years after entry of the judgment that first establishes the support obligation if the judgment was entered on or after January 1, 2004, unless a certificate of extension is filed as provided in Oregon Laws 2003, chapter 576, section 20. However, in no circumstance may the judgment lien be extended beyond the judgment remedies as provided in OAR 137-055-6110.

(b) 10 years after entry of the judgment that first establishes the support obligation if the judgment was entered before January 1, 2004, and was not renewed per the law in effect prior to January 1, 2004.

(6) An obligee may authorize the State of Oregon to release a lien against real property of an obligor when the obligee has submitted a signed and notarized lien release form to the administrator.

(7) If a release of lien is filed for all real property of the judgment debtor in a county, a judgment lien may be reinstated by recording a certified copy of the judgment document or lien record abstract for the judgment in that county.

Stat. Auth.: OL 2003, ch 576, § 18
Stats. Implemented: OL 2003, ch 576, § 18
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-4520

Collection and Distribution of Support Through Garnishment Proceedings

(1) The administrator may utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting past due support.

(2) When the administrator receives a collection from a garnishment proceeding, the Division of Child Support (DCS) shall hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before distributing any amounts due the obligee from the collection.

(a) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS Chapter 18.

(b) The administrator shall waive this requirement to hold the collection, and shall apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply and distribute the payment immediately.

(3) Notwithstanding section (1) of this rule, when the administrator initiates garnishment proceedings under ORS Chapter 18 against the following kinds of lump sum payments, the amount garnished shall be limited to 25% of such lump sum payments. These include lump sum payments on a settlement or judgment from:

(a) Disability benefits (except SSD);

(b) Public or private pensions, unless otherwise ordered by a court;

(c) Health insurance proceeds and disability proceeds from life insurance policies;

(d) Veteran's benefits and loans;

(e) The first \$10,000 of payment on account of personal bodily injury, amounts over \$10,000 are not limited to 25%;

(f) Payment in compensation of loss of future earnings reasonably necessary for support of an obligor and any current dependents; and

(g) Workers' compensation benefits.

(4) Upon receipt of a notice of the challenge to garnishment from the clerk of the court, the administrator shall file with the clerk of the court a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.

(5) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645 and notice of a challenge to garnishment is received, the administrator shall attach to the response described in section (4), copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.

(6) When the contents of a bank account are garnished and the obligor makes a challenge to garnishment which claims that all or some portion of the contents of the account came from lump sum payments listed in section (3) of this rule, the administrator may return to the obligor the portion of such lump sum payments received from that account in excess of 25%, as appropriate.

(7) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.

Stat. Auth.: ORS 25.020 & ORS 180.320-360
Stats. Implemented: ORS 18.645, ORS 25.020 & ORS 25.080
Hist.: AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0238; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4520; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5020

Payment of Support Obligations

(1) Regardless of the provisions of a support order, the obligor must make all support payments to the Division of Child Support (DCS) while the obligee receives assistance in the form of TANF cash assistance, foster care or Oregon Youth Authority services.

(2) The obligor must continue to pay support to DCS after assistance ends, for as long as arrears are assigned to the state or support enforcement services are provided.

(3) When a case with a support order is activated on the Child Support Enforcement Automated System, DCS will send notice to the obligor and obligee of the requirement to pay through DCS. Except as provided in OAR 137-055-5060, DCS will begin billing in the first full calendar month following 30 days from receipt of the referral or from the date the TANF benefits are issued. DCS shall determine the arrears on a newly activated case pursuant to OAR 137-055-3240.

(4) An obligor may pay DCS by money order, personal check, certified check, cashier or traveler's check, earnings allotment, cash or by authorizing electronic payment withdrawal from the obligor's account at a financial institution.

(5) Payment by electronic payment withdrawal may be established by completing an application furnished by and delivered to DCS, subject to the following conditions:

(a) The obligor's financial institution must be a participant in the Oregon Automated Clearinghouse Association;

(b) The obligor must be subject to a support order requiring payment to DCS or support enforcement services are being provided under ORS 25.080;

(c) The application must be complete and signed by all signatories to the obligor's account at the financial institution;

(d) The application must establish a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid to DCS on each monthly withdrawal date from the obligor's account at the financial institution;

(e) DCS will notify the applying obligor and the obligee by mail if they qualify for the electronic payment withdrawal process and of the initial withdrawal date;

(f) The obligor may revoke the electronic payment withdrawal authorization by notifying DCS at least 10 days before the monthly withdrawal date;

(g) DCS may revoke the authorization when there are insufficient funds in the obligor's account to make the authorized payment and no advance notice of that has been received. DCS will mail a notice of revocation to the obligor and obligee;

(h) DCS may refuse an obligor's application if it is not fully completed, or if the obligor has made any support payment to DCS with insufficient funds in the 12-month period preceding the obligor's application.

Stat. Auth.: ORS 25.080, ORS 25.427, ORS 180.320-360
Stats. Implemented: ORS 25.020 & ORS 25.396
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 4-1991, f. 1-28-91, cert. ef. 2-1-91; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0020; AFS 14-2001, f. 6-29-01,

ADMINISTRATIVE RULES

cert. ef. 7-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5025

Payment of Child Support to Other than the Department of Justice

(1) If current or past support is not assigned to the State of Oregon or another state, the parties may elect for support payments to be made:

- (a) To the obligee's checking or savings account; or
- (b) To an escrow agent licensed under ORS 696.511 to accept and disburse support payments by electronic fund transfer.

(2) An election by the parties must be in writing and filed with the court that entered the support order and include:

- (a) The signatures of both the obligee and obligor;
- (b) The amount of the support payment and date the payment is due;
- (c) The court case number; and
- (d) The account number of the checking or savings account or the name of the escrow agent and account number into which the payments are to be electronically transferred.

(3) If IV-D services are being provided and the order is not otherwise subject to ORS 25.020, upon receipt of a court order or election of the parties to make payments to an escrow agent or bank account, the administrator will close its case and discontinue services:

(a) After expiration of the 60-day case closure notice as provided in OAR 137-055-1120; or

(b) Immediately upon the signed written request of both parties waiving the 60-day notice.

(4) An election will terminate if:

(a) An application for services is received by the Child Support Program subsequent to an election; or

(b) Support is assigned to the State of Oregon or another state.

(5) When the administrator establishes arrears pursuant to OAR 137-055-3240 and the parties previously made payments through an escrow agent as provided in subsection (1)(b), the administrator may use the payment history of the escrow agent to establish arrears for any time period escrow services were provided.

Stat. Auth.: ORS 25.030

Stats. Implemented: ORS 25.030 & ORS 25.130

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5040

Accrual and Due Dates

This rule applies to any judgment or administrative order requiring the payment of child support, or child and spousal support through the Division of Child Support (DCS), in accordance with ORS 25.020:

(1) Each support payment required under a support award is due on the date indicated in the support award.

(2) When an award does not specify the date payments are to begin, the first payment shall be due on the last day of the month in which the order was signed, and the amount owed becomes a judgment effective on that day. The payment owed for each subsequent month shall be due, on the last day of each month.

(3) When the support obligation terminates during any month, the support obligation shall not be pro-rated for the month, unless the order for support provides otherwise. In any month:

(a) If the support obligation terminates on or before the due date for the month, no amount shall be due for that month.

(b) If the support obligation terminates after the due date for the month, the entire monthly support amount shall be due for that month.

(c) If the support award specifies that payments are due on a basis other than monthly, such as weekly, bi-weekly, or semi-monthly, the provisions of subsections (a) and (b) above shall apply to the specified payment period rather than monthly.

(4) If the administrator discovers that the support provisions in the body of an administrative order or judgment document are inconsistent with the money award, the administrator shall:

(a) On a case in which the Division of Child Support is providing distribution only services, send a courtesy notice to all parties;

(b) On a case in which services are being provided under ORS 25.080 but the support award was not entered by the administrator, send a written notice to all parties requesting action be taken to correct the error. The notice will advise the parties that their support case will be enforced per the judgment register Oregon Judicial Information Network (OJIN) until DCS is provided with a copy of the court corrected judgment and support award;

(c) On a case in which services are being provided under ORS 25.080 and the support award was entered by the administrator, file a motion to correct the error. Until the error is corrected, the support case will be enforced per the judgment register OJIN;

(d) Notwithstanding subsection (b) of this section, the administrator may instead file a motion to correct the error if the child support rights, as defined in ORS 25.010, have been assigned to the state.

Stat. Auth.: ORS 180.320-360

Stats. Implemented: ORS 25.020 & ORS 25.080

Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 15-1988, f. & cert. ef. 2-24-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0040; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0080; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5040; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5110

Child Attending School Definitions

As used in OAR 137-055-5120 and 137-055-5125, the following terms have the meanings outlined below:

(1) "Child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school. Unless the child otherwise qualifies as a child attending school, a child attending school does not include:

(a) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces") who is serving on active duty; or

(b) A member of the National Guard who is serving full-time National Guard duty.

(2) "Normal break" means:

(a) Summer semester or term;

(b) The period of time between graduation from or completion of high school and the beginning of the next regularly scheduled term, semester, or course of study at a school;

(c) The period of time between the end and beginning of regularly scheduled consecutive school semesters, terms, or courses of study; or

(d) Any other scheduled break between courses of study that is defined by the school as a normal break.

(3) "Quarterly" means annual quarters ending on March 31, June 30, September 30, and December 31. This is the reporting schedule the Child Support Program may require for a child who is attending a school which does not have traditional terms or semesters, or has courses which last longer than six months.

(4) "Regularly attending" means the child is enrolled in an educational course load of at least half-time as defined by the school.

(5) "School" means any of the following:

(a) An educational facility such as a high school, community college, four-year college, or university;

(b) A course of vocational or technical training, including Job Corps, designed to fit the child for gainful employment;

(c) A high school equivalency course, including (but not limited to), a General Educational Development (GED) program; or

(d) A school in grade 12 or below, including home schooling approved by the local school district.

(6) "Termination of official accounting functions" means the Division of Child Support shall cease to perform billing, accrual, distribution, and record-keeping functions for ongoing support with regard to the child attending school. If the order is a class order and there is an additional child(ren) for whom ongoing support is still ordered, termination of official accounting functions means:

(a) Any support paid directly to such child will cease and will be redirected to the obligee; and

(b) Support accrual for such child will be prorated to the other child(ren) for whom ongoing support is still ordered.

Stat. Auth.: ORS 25.020, & ORS 180.320-360

Stats. Implemented: ORS 25.020 & ORS 107.108

Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5220

Satisfaction of Support Awards

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support award" in certain circumstances. This rule shall not be construed as limiting the authority of DCS to approve or credit a satisfaction of support award in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Division of Child Support (DCS) of the Department of Justice (DOJ), an obligee may satisfy amounts indicated on the case records as past due by filing a properly-completed "satisfaction of support award" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

ADMINISTRATIVE RULES

(2) When current support or arrears are assigned to the State of Oregon or to another state, and the obligor is seeking credit for support payments not made through DCS:

(a) DCS and its attorneys have authority to approve and sign satisfactions.

(b) This authority may be exercised only when the obligee has signed a satisfaction of support award form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of support award for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support award not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS shall also promptly forward the satisfaction form to the appropriate court administrator, together with a certificate stating the amount of support satisfaction entered on the case record.

(5) Except when satisfied and approved by DCS and its attorneys or by a court or hearing order, DCS will not enter a satisfaction on a case record for support that has been assigned to the State of Oregon or another state.

(6) When DCS rejects a satisfaction in part or in full as provided in (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address of record. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support award was entered;

(c) The Oregon CSP support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support and/or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections (2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support award" must be notarized, except on court orders or on those satisfactions approved under sections (2) and (3) of this rule.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the support award has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support award and that the payment records shows no arrears. DCS shall be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of section (9)(a) of this rule, DCS shall examine its support records and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of support award. DCS shall promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of support award. DCS shall also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS shall give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of support award unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing shall be conducted under ORS 183.310 to 183.550 before an administrative law judge.

Stat. Auth.: ORS 180.320-360 & OL 2003, ch 576, § 25

Stats. Implemented: ORS 18.400 & ORS 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-35-005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-5510

Request for Credit Against Child Support Arrears for Physical Custody of Child

(1) In accordance with ORS 416.425, the administrator may allow a credit against child support arrearages for periods of time during which the obligor has physical custody of the child(ren) when:

(a) Physical custody was pursuant to a court ordered parenting time schedule and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the child(ren) pursuant to court order.

(2) A request for credit against child support arrears under this rule must be made in writing either:

(a) If the credit is requested for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification, for any time period within two years prior to the date of the request.

(3) Credit for physical custody may only be given if the child(ren) is/are with the obligor for the entire month for which credit is sought. When the obligor is seeking a credit for less than all of the children under a child support order, a credit may only be given if the order is not a class order as defined in OAR 137-055-1020.

(4) Notwithstanding section (3), the credit may only be allowed to the extent it will not result in a credit balance, as defined in OAR 137-055-3490(1).

(5) The administrator shall send to the parties by regular mail or served as part of the modification action, notice and proposed order of the intended action, including the amount to be credited. Such notice shall advise the obligor and obligee that:

(a) The obligor and/or obligee, within 30 days from the date of this notice, may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which the obligor or obligee may object is that:

(A) The obligor did not have physical custody of all the child(ren) under the support order for the time periods requested;

(B) The obligor had physical custody of the child(ren), but the custody was not with the knowledge and consent of the obligee and the obligor does not have legal custody of the child(ren);

(C) The obligor had physical custody of the child(ren) pursuant to a court order for parenting time and the order does not allow the obligor a credit for periods of parenting time.

(6) Any appeal of the decision made by an administrative law judge shall be to the circuit court for a hearing de novo.

(7) If a credit is allowed pursuant to this rule, the credit shall be applied as follows:

(a) If none of the arrears are assigned to the state, the credit shall be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit shall be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit shall be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

(d) The terms used in this section are as defined in OAR 137-055-6020.

Stat. Auth.: ORS 180.320-360 & ORS 416.455

Stats. Implemented: ORS 416.425

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-6020

Application and Distribution of Support Payments

(1) For purposes of this rule, the following definitions apply:

ADMINISTRATIVE RULES

(a) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority.

(b) "Current support" is the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(c) "Family's conditionally-assigned arrears" is past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the family receives assistance.

(d) "Family's unassigned arrears" is past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(e) "Family's unassigned arrears during assistance period" is past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(f) "Future support" is an amount received which represents payment on current support for future months.

(g) "State's permanently-assigned arrears" is past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only.

(h) "State's temporarily-assigned arrears" is past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. As of October 1, 2000, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the family is not receiving assistance.

(i) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation.

(2) Whenever support payments are assigned to the state, the state share of the payments shall be either:

(a) Distributed to the Department of Human Services if funds were expended to provide foster care assistance to the family;

(b) Distributed to the Oregon Youth Authority if funds were expended by the Oregon Youth Authority to provide care to a member of the family; or

(c) Retained by the Division of Child Support (DCS) if funds were expended to provide Temporary Assistance for Needy Families cash assistance to the family.

(3) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments shall be distributed to the Tribe as provided in 42 USC 657.

(4) **Table 1** is included in this rule as an aid in understanding the arrears types defined in section (1) of this rule. [Table not included. See ED. NOTE.]

(5) DCS shall distribute support payments to the family within two business days after receipt if sufficient information identifying the payee is provided, except for as follows:

(a) Support payments received as a result of tax refund intercepts shall be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund.

(b) Support payments received from a garnishment, issued pursuant to ORS Chapter 18, shall be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person who has an interest in the garnished property makes a challenge to garnishment, the support payment shall be held pending the court decision;

(c) Support payments for future support, per section (20) of this rule; or

(d) Support payments for less than five dollars may be delayed until a future payment is received which increases the payment amount due the family to at least five dollars.

(e) When a check has been dishonored, future support payments paid by personal check from that payor may be held in accordance with OAR 137-055-6240;

(f) When an obligor contests an order to withhold funds shall be disbursed pursuant to OAR 137-055-4160(4).

(6) The Oregon Child Support Program (CSP) may send support payments designated for the obligee to another person or entity caring for the child(ren); however, prior to doing so, the CSP shall require a notarized statement of authorization from the obligee or a court order requiring such distribution. The CSP shall change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(7) Child support and spousal support have equal priority in the distribution of payments.

(8) For Oregon support orders or modifications entered on or after October 4, 1997, a prorated share (unless otherwise ordered) of current support payments received within the month due shall be distributed directly to the child qualified as a child attending school per ORS 107.108 and OAR 137-055-5120. Any arrears resulting from unpaid current support is a judgment owing to the obligee as the judgment creditor.

(9) If the obligor has a current support obligation for multiple children on a single case and those children have different assistance status and the order does not indicate a specified amount per child, current support payments shall be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases shall be distributed per subsections (16)(b) through (e) of this rule. For example, the obligor has a current support obligation for three children of \$300 per month. One child is not receiving assistance, one child is receiving cash assistance under the TANF program, and foster care maintenance payments are being made on behalf of the third child. A \$300 current support payment would be allocated as follows:

(a) \$100 to the family on behalf of the child not receiving assistance;

(b) \$100 to DCS on behalf of the child receiving cash assistance under the TANF program not to exceed the amount of unreimbursed assistance; and

(c) \$100 to the Department of Human Services for the foster care maintenance payments being made on behalf of the third child.

(10) Notwithstanding any other provisions of this rule, support payments received on behalf of an obligor with an open bankruptcy case shall be allocated and distributed as directed by the bankruptcy trustee, the obligor's bankruptcy plan and in accordance with federal bankruptcy law.

(11) DCS shall recover the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DCS shall credit the obligor's case for the full amount of collection. DCS shall reimburse the CSP for the prepaid fee, then distribute the balance per section (13) through (16) as applicable.

(12) Within each arrears type in the sequence of payment distribution in sections (13) through (18) of this rule, DCS shall apply the support payment to the oldest debt in each arrears type.

(13) DCS shall distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(14) DCS shall distribute support payments received on behalf of a family receiving assistance in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(d) Family's unassigned arrears during assistance period unless the state is making foster care maintenance payments on behalf of the child(ren);

(e) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of unreimbursed assistance, up to the total support obligation owed, shall be reported as excess and be paid to DHS to be used in the manner it determines will serve the best interests of the child(ren).

(15) Prior to October 1, 2000, DCS shall distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

ADMINISTRATIVE RULES

(c) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(16) On or after October 1, 2000, DCS shall distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) Family's conditionally-assigned arrears;

(d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(17) Notwithstanding any other provisions of this rule, DCS shall distribute support payments received from federal tax refund intercepts in the following sequence:

(a) Fee charged by the Secretary. Despite the fee, DCS must credit the obligor's case for the full amount of collection. If any portion of the federal tax refund intercept payment will be applied to subsection (b), (c), or (d) of this section, the fee will be paid by DCS;

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) Family's conditionally-assigned arrears. However, federal tax refund intercepts applied to family's conditionally-assigned arrears must be retained by the state, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears;

(18) Notwithstanding any other provisions of this rule, DCS shall distribute support payments received from state tax refund intercepts in the following sequence:

(a) Fee charged by the DOR. Despite the fee, DCS must credit the obligor's case for the full amount of collection. If any portion of the state tax refund intercept payment will be applied to subsection (e), (f) or (g) of this section, the fee will be paid by DCS;

(b) Current support;

(c) Family's unassigned arrears;

(d) Family's conditionally assigned arrears;

(e) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(f) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(g) Parentage testing fee.

(19) Any excess funds remaining after arrears are paid in full shall be processed per OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support per section (20) of this rule.

(20) DCS shall distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts shall be applied to future months unless current support and all arrears have been paid in full.

(21) When an obligor has multiple support cases, the distribution sequence for each case shall be as set out in sections (13) through (18), but DCS shall allocate support payments to each of the multiple cases as follows:

(a) When an income withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income, issued pursuant to ORS Chapter 25, DCS shall allocate the amount received as follows:

(A) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case shall receive a proportionate share of the total amount withheld. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(B) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received shall be allocated as follows:

(i) Current support to each withholding case;

(ii) Equally to each withholding case where arrears are owed. However, no case shall receive more than the maximum allowable withholding amount for that case pursuant to OAR 137-055-4200 or, as appro-

priate, under an expanded income withholding pursuant to OAR 137-055-4220. Any remaining funds shall be equally distributed to the obligor's other cases. Further, no case shall receive more than the total amount of current support and arrears owed on that case at the time this distribution is made.

(b) When support payments received from federal tax refund intercepts are not sufficient to pay the full arrears amount on each case certified for federal tax offset, DCS shall allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case shall receive an equal share. However, no case shall receive more than the state's permanently-assigned arrears on that case.

(B) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) An equal share of the remaining funds for each certified case.

However, no case shall receive more than the state's temporarily-assigned arrears on that case.

(C) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned arrears on all certified cases, but is not enough to pay in full the family's arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) State's temporarily-assigned arrears to each certified case;

(iii) An equal share of the remaining funds for each certified case.

However, no case shall receive more than the total amount of arrears owed on that case at the time this distribution is made.

(c) When support payments received from state tax refund intercepts are not sufficient to pay the current support and full arrears amount on each case certified for state tax offset, DCS shall allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the current support due on all of the obligor's certified cases, each certified case shall receive a proportionate share of the total amount received. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases certified for state tax offset, and then multiplying the resulting percentage by the total amount received.

(B) If the total amount received is sufficient to pay the current support due on all cases but is not sufficient to pay in full the family's arrears (both conditionally and unassigned arrears) on all of the obligor's certified cases, each certified case shall be allocated an equal share. However, no case shall receive more than the arrears amount due the family on that case at the time this distribution is made.

(C) If the total amount is sufficient to pay the family's arrears (both conditionally and unassigned arrears) on all certified cases, but is not enough to pay in full all the state's permanently-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) An equal share of the remaining funds for each certified case toward state's permanently-assigned arrears. However, no case shall receive more than the state's permanently-assigned arrears on that case.

(D) If the total amount received is sufficient to pay both the family's arrears and the state's permanently-assigned arrears, but not sufficient to pay the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received shall be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) State's permanently-assigned arrears on all certified cases;

(iii) An equal share of the remaining funds toward state's temporarily-assigned arrears. However, no case shall receive more than the state's temporarily-assigned arrears on that case.

(E) Any remaining funds may be applied toward parentage testing fee.

(d) DCS shall allocate support payments made by personal check, money order, or cash per subsection (21)(f) of this rule unless the obligor designates in writing at the time of payment the amounts to be allocated to each case. DCS shall apply payments in excess of current support and arrears toward future support per section (20) of this rule.

(e) DCS shall allocate support payments to one case, rather than a proportionate allocation, when:

(A) The support payment resulted from a garnishment, issued pursuant to ORS Chapter 18, on a particular case; or

ADMINISTRATIVE RULES

(B) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support; or

(C) The support payment resulted from a contempt order in a particular case; or

(D) Any other judicial order that requires distribution to a particular case.

(f) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DCS shall allocate support payments only among the cases listed in the writ of garnishment and in the manner provided in subsection (21)(g) of this rule.

(g) DCS shall allocate all other support payments received as follows:

(A) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case shall receive a proportionate share of the total amount received. For each case, DCS shall determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(B) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received shall be allocated as follows:

(i) Current support to each case;

(ii) Equally to each case where arrears are owed. However, no case shall receive more than the total amount of current support and arrears owed on that case at the time this distribution is made. Any remaining funds shall be equally distributed to the obligor's other cases.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 25.020, ORS 25.610, ORS 180.320-360

Stats. Implemented: ORS 18.645, 25.020, 25.150, 25.414 & 25.610

Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518; AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; Renumbered from 461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-6025

Distribution of Support Payments to Private Collection Agencies

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled" means support payments that the Division of Child Support (DCS) is required to distribute to the obligee pursuant to OAR 137-055-6020.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator shall send to the obligee an authorization form developed pursuant to section (7) of this rule.

(3) Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (4) of this rule, the obligee must submit a signed and notarized authorization form to the CSP with the following information:

(a) The child support case number;

(b) The obligee's and obligor's full names;

(c) The names of the children on the child support case for whom the obligee is entitled to receive support; and

(d) The name and address of the collection agency to which payments should be sent.

(4) Upon receipt of a completed authorization form DCS shall:

(a) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS shall adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(b) Send the notice developed pursuant to section (7)(b) of this rule to the obligor;

(c) Credit the obligor's account for the full amount of each support payment received by DCS; and

(d) Disburse support payments received to which the obligee is legally entitled to the collection agency.

(5)(a) DCS may stop disbursing support payments to a collection agency and reinstate disbursements to the obligee if:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

(B) The obligee requests that the CSP stop disbursing support payments to the collection agency;

(C) The administrator is made aware that the collection agency is not in compliance with the provisions of section (8) of this rule; or

(D) The Department of Consumer and Business Services (DCBS) notifies the Department of Justice that the collection agency is in violation of its rules.

(b) DCS shall stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with section (8) of this rule or rules adopted by DCBS. DCS shall at no time be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from the obligee was received.

(6) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(7) The CSP shall develop:

(a) An authorization form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. Such form shall include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to an obligor to notify the obligor when DCS has been given authorization by the obligee to disburse support payments to a collection agency.

(8) A collection agency to which the obligee has provided authorization for DCS to disburse support payments:

(a) May only provide investigative and locate services to the obligee unless written authorization is received from the administrator as provided in section (9) of this rule;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 29 percent of each support payment received by the collection agency to which the obligee is legally entitled unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee; and

(d) Shall include in the agreement with the obligee a notice that provides information on the fees, penalties, termination and duration of the agreement.

(e) Shall report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(9) Upon request, the administrator may provide written authorization to the collection agency to initiate enforcement action to collect the support award. The authorization may:

(a) Authorize a specific enforcement action only; or

(b) Authorize any enforcement action until further notice from the administrator.

(10) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(11) The administrator shall not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

Stat. Auth.: ORS 25.020, ORS 180.320-360

Stats. Implemented: ORS 25.020

Hist.: AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6025; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6025; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

137-055-6110

Expiration of Support Judgment Remedies

(1) Child support awards entered on or after January 1, 1994; Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 25 years after the entry of the judgment that first establishes the support obligation.

ADMINISTRATIVE RULES

(2) Child support awards entered prior to January 1, 1994: Judgment remedies for any amounts accrued under a child support award prior to January 1, 1984, are expired unless a renewal of judgment was filed. Judgment remedies for any amounts not expired on January 1, 1994 expire the later of:

(a) 25 years from the date of the judgment that first establishes the support obligation;

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(3) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another state, the expiration of judgment under the laws of this state or of the issuing state, whichever is longer, applies.

(4) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(5) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(6) The judgment remedies for a money award for child or spousal support expire by operation of law without any action required of a party.

(7) Notwithstanding the provisions of this rule, the expiration and extension of a judgment lien created by any money award for child or spousal support shall be as provided in OAR 137-055-4450.

(8) The Department of Justice, Division of Child Support (DCS) shall be the entity responsible for auditing for expiration of judgment remedies on cases receiving support enforcement services under ORS 25.080.

(9) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS shall reduce the case arrears to zero.

(10) When an expiration of judgment audit is completed, DCS shall notify the parties if there is any change to the arrears as a result of the audit. The notice shall include:

(a) The current balance or zero, as appropriate, per section (9) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(11) If a party requests an administrative review, DCS shall:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and shall make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484

Stat. Auth.: ORS 180.320-360 & OL 2003, ch 576, §§ 18, 19, 20, 21, 22

Stats. Implemented: ORS 25.700

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04

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

Adm. Order No.: OSFM 1-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 12-1-03

Rules Amended: 837-012-1210, 837-012-1220, 837-012-1260, 837-012-1290, 837-012-1300, 837-012-1320, 837-012-1340

Subject: This rule is an amendment to adopt the current edition of National Fire Protection Association Standard Explosives Material Code 495. Other amendments include clarification of language and general housekeeping items. A hearing was held on December 15, 2003 on proposed amendments to these rules. The hearing included an opportunity for public comment.

Rules Coordinator: Glen Andreassen—(503) 373-1540, ext. 210

837-012-1210

Definitions

For purposes of OAR 837-012-1200 through 837-012-1420 the following definitions apply:

(a) "Authorized Agent" as referenced in ORS 480.210 means an employee or representative of a Manufacturer of Explosives or Dealer in Explosives licensed by BATFE who possesses Explosives for purposes of manufacturing or dealing. The term does not include an employee or representative who uses or possesses Explosives for other purposes.

(b) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(c) "Certificate of Possession" has the meaning provided in ORS 480.200(1).

(d) "Certificate of Registration" has the meaning provided in ORS 480.200(2).

(e) "Day Box" means:

(A) A structure or container used for the temporary transport or temporary keeping of explosives for present use;

(B) That is always attended and in the line of sight vision of a holder of a Certificate of Possession; and

(C) That complies with the construction requirements of NFPA 495, Explosive Materials Code, 2001 Edition, 8 -6.3 (a) and (b).

(f) "Dealer" as referenced in ORS 480.210 means any Person engaged in the business of distributing Explosives at wholesale or retail.

(g) "Detonator" means any device containing an initiating or primary Explosive that is used for initiating detonation, and not containing more than 10g of total Explosive material per unit, excluding ignition or delay charges. The term includes, but is not limited to, electric Detonators of the instantaneous and delay types, Detonators for use with safety fuses, detonating cord delay connectors, and nonelectric Detonators of the instantaneous and delay types that consist of a detonating cord, a shock tube, or any other replacement for electric leg wires according to **NFPA 495, Explosive Materials Code, 2001 Edition**.

(h) "Expire" as referenced in ORS 480.239 and 480.244 means a renewal Certificate of Possession or renewal of Certificate of Registration has not been issued by the Office of State Fire Marshal on or before the expiration date of the current certificate.

(i) "Explosive" or "Explosives" has the meaning provided in ORS 480.200(3).

(j) "Facility" means a single building, structure, or container used or intended to be used for the storage of Explosives. A Day Box is not a Facility.

(k) "Fertilizer" means any substance, or any combination or mixture of substances, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical or chemical change in the soil and Shall contain five percent or more of available nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), singly, collectively or in combination, except hays, straws, peat and leaf mold, and unfortified animal manures according to ORS 633.310 (5).

(l) "Formal Hearing" means a proceeding before a hearings officer conducted pursuant to the Administrative Procedures Act (APA), ORS chapter 183.

(m) "Individual" means a single human being.

(n) "Informal Conference" means a meeting between the party(ies) and the Office of State Fire Marshal, prior to a Formal Hearing, that may include a discussion about whether a basis exists for informal disposition of a contested case by stipulation, agreed settlement, consent order or other means.

(o) "Lapse" as referenced in ORS 480.239 and 480.244, has the meaning provided in subsection (h) of this rule.

(p) "Magazine" has the meaning provided in ORS 480.200(5). (Refer to OAR 837-012-1210(j) for a definition of Facility).

(q) "Manufacturer" as referenced in ORS 480.210 means any Person engaged in the business of manufacturing Explosives for purposes of sale or distribution or for the Person's own use.

(r) "NFPA" means the National Fire Protection Association.

(s) "Owner" means a Person with a vested ownership interest in the Magazine. The term does not mean a renter, lessor, or sub-lessor of the Magazine.

(t) "Person" means one or more Individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of Persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(u) "Possession" means to own, to have physical Possession of, or otherwise to exercise dominion or control over Explosives.

ADMINISTRATIVE RULES

(v) "Re-location" for purposes of ORS 480.244 and OAR 837-12-1360 means moving a Magazine any distance.

(w) "Request for Hearing" means a written request for a Formal Hearing.

(x) "Shall" means that the rule establishes a mandatory requirement.

(y) "Small arms ammunition" has the meaning provided in ORS 480.200(6).

(z) "Small arms ammunition primers" has the meaning provided in ORS 480.200(7).

(aa) "Store" means to deposit and place Explosives in a Magazine for safekeeping and future use.

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

Stat. Auth.: ORS 476 & ORS 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

837-012-1220

General

(1) A Certificate of Possession allows the holder of the certificate to engage in those activities including the purchase, Possession, storage and transportation of Explosives when those activities are otherwise in conformance with the requirements of these rules and any other applicable federal, state and local laws, rules and regulations.

(2) Holders of a Certificate of Possession Shall comply with the following:

(a) ORS 480.200 through 480.290;

(b) OAR 837-012-1200 through 837-012-1420;

(c) All applicable regulations in the Oregon Uniform Fire Code, 1997 Edition, and Oregon Structural Specialty Code, 1998 Edition;

(d) NFPA 495, Explosive Materials Code, 2001 Edition, as adopted in OAR 837-012-1340; and

(e) All applicable federal, state and local laws, rules, and regulations governing Explosives.

(3) Holders of a Certificate of Possession Shall purchase Explosives only from those Persons who have a BATFE license to sell Explosives.

(4) Pursuant to ORS 480.210(1)(b), a BATFE Dealer or Manufacturer license authorizes the holder of such a license to possess Explosives only when the Possession is for purposes of a use or activity expressly authorized by the license, namely the business of manufacturing or dealing in Explosives.

(5) Proof pursuant to ORS 480.210(3)(b) Shall be:

(a) A certified copy of a Manufacturer or Dealer license issued by the BATFE; or

(b) A written certification signed by a Person that holds the license referred to in subsection (a) that certifies under penalty of perjury that the Person charged under ORS 480.210(1) is an employee or representative of the licensed Person and is engaged in the business of manufacturing or dealing in Explosives.

(6) Holders of a Certificate of Possession or a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in their address within two weeks of the date of the change.

(7) Holders of a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in ownership of a Magazine within two weeks of the date of the change.

(8) Holders of an unexpired Certificate of Possession or Certificate of Registration may request a duplicate copy of their certificate by certifying in writing to the Office of State Fire Marshal that their certificate has been lost, stolen or destroyed. Written requests shall be signed and dated by the holder of the certificate.

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

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

837-012-1260

Certificate of Possession – Examination

(1) Upon receipt and processing of a completed application, the Office of State Fire Marshal Shall notify the applicant of the date, time and place for the examination.

(2) Applicants Shall provide photo identification at the time they appear to take the examination. The Office of State Fire Marshal Shall only accept photo identification issued by the Department of Motor Vehicles in the applicant's state of residency.

(3) The examination is based upon, and Shall examine the applicant's knowledge of:

(a) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340; and

(b) ORS 480.200 through 480.290.

(4) The examination Shall be open book.

(a) Applicants are responsible for providing their own copy of NFPA 495, Explosive Materials Code, 2001 Edition, to use during the examination.

(b) The Office of State Fire Marshal Shall provide a copy of ORS 480.200 through 480.290 for use during the examination.

(5) To pass the examination, the applicant must answer correctly 80% or more of the examination questions.

(6) The Office of State Fire Marshal Shall notify applicants of the results of their examination at the address listed on their examination application.

(7) If an applicant fails to arrive at the scheduled examination appointment, fails to complete the examination, or fails to pass the examination, to reschedule the examination or to take the examination again, the applicant Shall submit to the Office of State Fire Marshal a new application and fee pursuant to OAR 837-12-1230 and 837-12-1240.

(8) Passing examination scores Shall remain valid for two years from the date the examination was completed. If the examinee has not applied for and been issued a Certificate of Possession within two years from the date of completion of the examination in which the passing score was received, the examination score Shall be invalid and the applicant Shall re-take and pass the examination.

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

837-012-1290

Explosives Storage

(1) Explosives Shall be Stored only in a Magazine that has been issued a Certificate of Registration by the Office of State Fire Marshal.

(2) The storage of Explosives Shall be in compliance with all applicable requirements of:

(a) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340;

(b) Oregon Uniform Fire Code, 1997 Edition;

(c) Oregon Structural Specialty Code, 1998 Edition; and

(d) All applicable federal, state and local laws, rules and regulations.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290, 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04

837-012-1300

Magazine Registration and Inspection

(1) Magazines not issued a Certificate of Registration Shall not be used for the storage of Explosives.

(2) To be eligible for a Certificate of Registration, a Magazine Shall comply with the requirements of:

(a) ORS 480.200 through 480.290;

(b) OAR 837-012-1200 through OAR 837-012-1240;

(c) Oregon Uniform Fire Code, 1997 Edition;

(d) Oregon Structural Specialty Code, 1998 Edition;

(e) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-12-1340; and

(f) All applicable federal, state and local laws, rules and regulations.

(3) Prior to the issuance of a Certificate of Registration, the Magazine Shall be inspected for compliance with these rules.

(4) The inspection Shall:

(a) Be completed by the Office of State Fire Marshal; or

(b) Be completed by the BATFE pursuant to OAR 837-12-1320.

(5) A Certificate of Registration allows the holder of the certificate to Store Explosives in the registered Magazine when otherwise in conformance with the requirements of these rules.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290, 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04

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 six months 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.

ADMINISTRATIVE RULES

(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

837-012-1340

Fire and Life Safety Standards

(1) NFPA 495, Explosive Materials Code, 2001 Edition, is hereby adopted with the following exceptions:

(a) Chapter four is not adopted;

(b) Although NFPA 495, Explosive Materials Code, 2001 Edition, requires Magazines to be opened and inspected at intervals of three days, the Office of State Fire Marshal requires Magazines to be opened and inspected at intervals of seven days. (See NFPA 495, Explosive Materials Code, 2001 Edition, 8-7.2); and

(c) NFPA standards regarding the transportation of Explosives are hereby adopted for purposes of the examination required under ORS 480.225(1)(j).

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

Adm. Order No.: OSFM 2-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 12-1-03

Rules Amended: 837-030-0130, 837-030-0220, 837-030-0230, 837-030-0240, 837-030-0250, 837-030-0280

Subject: The 2003 Legislative session passed HB 2248, which has a fiscal impact on the liquefied petroleum gas industry in Oregon. HB 2248 increased certain liquefied petroleum gas fees, added two fees and reduced one fee. These fees, effective January 1, 2004, are in conflict with the currently adopted administrative rules.

The revised fee structure was developed and passed with a partnership between the liquefied petroleum gas industry, hearth products industry, and the Office of the State Fire Marshal.

The Office of State Fire Marshal held a hearing on December 15, 2003, on proposed amendments to these rules. The hearing included an opportunity for public comment.

Rules Coordinator: Glen Andreassen—(503) 373-1540, ext. 210

837-030-0130

Fire and Life Safety Standards

(1) The following National Fire Protection Association Standards (NFPA) are hereby adopted by reference and are the Standards on which the examinations referenced in these rules will be primarily based:

(a) NFPA 54 — National Fuel Gas Code; (1999 edition); and

(b) NFPA 58 — Storage and Handling of Liquefied Petroleum Gases (2001 edition).

(2) Whenever the following phrases or abbreviations appear in the above referenced standards, they shall mean the following:

(a) Authority Having Jurisdiction means the State Fire Marshal;

(b) National Electrical Code means the Oregon Electrical Specialty Code; and

(c) NFPA means the National Fire Protection Association;

(3) The Oregon State Fire Marshal has adopted the Uniform Fire Code, Article 82 (Liquefied Petroleum Gas) and Uniform Fire Code Standard 82-1 (NFPA 58- 2001 edition) as amended for inspection and enforcement of liquefied petroleum gas installations pursuant to ORS 476.030(1) and 480.420(1). (Refer to Oregon Administrative Rule 837, Division 40.).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.420
Hist.: FM 22, f. 11-15-65; FM 59, f. 2-25-72, ef. 3-15-72; FM 62, f. 6-14-73, ef. 7-1-73; FM 66, f. 2-20-75, ef. 3-11-75; FM 1-1981, f. 7-20-81, ef. 8-1-81; FM 6-1985, f. & ef. 9-20-85; FM 1-1987, f. & ef. 3-18-87; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0010, 837-030-0015, 837-030-0020 & 837-030-0025; OSFM

3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 2-2002, f. & cert. ef. 2-25-02; OSFM 2-2004, f. & cert. ef. 1-14-04

837-030-0220

License Renewal

(1) All licenses shall be renewed on or before a date specified by the State Fire Marshal. Such date shall be 30 days after service of written notice by the State Fire Marshal and shall be specified on the renewal application.

(2) License renewal shall be made on a form provided by the Office of State Fire Marshal and shall be accompanied by the appropriate fees.

(3) Company license renewals shall be valid for a period of one year. Fitter and/or truck equipment operator licenses renewals shall be valid for a period of two years.

(4) Licenses not renewed by the specified date are subject to a late fee. The fees for the liquefied petroleum gas program are located in Oregon Revised Statute as follows: ORS 480.436 License fees; term of licenses; delinquency penalty.

(5) Licenses not renewed by their expiration date are invalid and the licensee shall cease working until such time as licensing is brought current.

Stat. Auth.: ORS 476, 480
Stats. Implemented: ORS 480.436
Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04

837-030-0230

Motor Fuel Installations (Conversions)/Plan Approval

(1) Any company converting or manufacturing any vehicle or machinery to use liquefied petroleum gas for motor fuel shall obtain the company and fitter licenses as required in OAR 837-30-140.

(2) Any manufacture of vehicle or machinery, or any conversion of existing vehicle or machinery to use liquefied petroleum gas as motor fuel, shall be in compliance with all applicable liquefied petroleum gas laws, rules and regulations.

(3) All equipment shall be installed in accordance with these regulations and the applicable safety standards as adopted, unless written approval is otherwise granted by the State Fire Marshal.

(4) The State Fire Marshal or his assistant may make on-site inspections of manufacturing plants where liquefied petroleum gas motor fuel systems are being installed to ensure compliance with applicable safety standards.

(5) Any company manufacturing or converting vehicles or machinery to use liquefied petroleum gas as motor fuel may make application for plan approval of a model or prototype to the State Fire Marshal. The application and plans shall include two complete sets of plans which shall show in detail:

(a) The location of all liquefied petroleum gas equipment including containers, fuel lines, carburetion system, vaporizers, and all pertinent equipment; and

(b) The name of the equipment manufacturer and model numbers when available;

(c) Sufficient information to permit the State Fire Marshal to determine compliance or noncompliance with fire and life safety regulations relating to the use of liquefied petroleum gas as motor fuel.

(6) Upon approval, one copy of the plans shall be returned to the applicant with the written approval and a permit number shall be assigned. One copy of the plans shall be retained by the State Fire Marshal;

(7) If the plans are disapproved, the applicant will be notified in writing the reason the plans were disapproved and provided information on how to meet the applicable fire and life safety regulations so the plans may be approved.

(8) All vehicles or machinery manufactured or converted to use liquefied petroleum gas as motor fuel and installing liquefied petroleum gas motor fuel tanks shall be reported to the State Fire Marshal;

(9) The State Fire Marshal shall be notified by the last day of each month by the installation company of all new liquefied petroleum motor fuel installations made during the preceding month.

(10) United States Post Office postmark date shall be used to determine the reporting date.

(11) Notification shall be made on a form (Notice of Installation of Liquefied Petroleum Gas Tank for Motor Fuel) and shall include the following information:

(a) Customer name for whom the conversion was made;

(b) Address where the vehicle or machinery may be inspected;

(c) Date conversion was completed;

(d) Water capacity of tank;

(e) Signature of fitter who installed tank and their fitter license number;

ADMINISTRATIVE RULES

- (f) Tank serial number;
 - (g) Name of company installing tank and their company license number;
 - (h) Any other information that may be helpful in locating the tank.
- (12) The company representative shall sign the notice verifying the information is correct; and

(13) The appropriate tank installation fee for the liquefied petroleum gas program is located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

EXCEPTION: This section shall not apply to liquefied petroleum gas installations made in manufactured dwellings or recreational vehicles performed during the construction of the manufactured dwelling or recreational vehicle, or the alteration or repair of the liquefied petroleum gas installation in a manufactured dwelling or recreational vehicle when they are made pursuant to the manufacturer's warranty. All repairs or alterations performed outside of the initial construction or the manufacturer's warranty shall be completed by a licensed company and a licensed fitter.

(14) Any vehicle or machinery manufactured or converted to use liquefied petroleum gas as motor fuel that is found to be in violation of the applicable fire and life safety standards, may be ordered by the State Fire Marshal to be taken out of service. Once out of service, it shall not be placed back in service, sold or offered for sale until all necessary corrections have been made, the State Fire Marshal notified and the vehicle or machinery put back in service by the State Fire Marshal.

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

Stat. Auth.: ORS 476, 480

Stats. Implemented: ORS 480.450

Hist.: FM 52, f. 4-29-71, ef. 5-25-71; FM 81, f. & ef. 3-3-76; FM 6-1985, f. & ef. 9-20-85; FM 6-1987, f. & ef. 10-20-87; FM 3-1995, f. & cert. ef. 11-14-95, Renumbered from 837-030-0035; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04

837-030-0240

Reporting Tank Installations

(1) The State Fire Marshal shall be notified by the last day of each month by the installing company of all new liquefied petroleum gas tank installations made during the preceding month.

(2) United States Post Office postmark date shall be used to determine the reporting date.

(3) Notification shall be made on a form (Notice of Installation of Liquefied Petroleum Gas Tank) provided by the Office of State Fire Marshal and include the following information:

- (a) Customer name and contact phone number for whom the tank was installed;
- (b) Address where tank was installed;
- (c) County of installation;
- (d) Date tank was installed;
- (e) Water capacity of tank;
- (f) Tank serial number;
- (g) Signature of fitter who installed tank and their fitter license number;

(h) Name of company installing tank and their company license number;

(i) Any other information that may be helpful in locating the tank including a map providing directions to the tank location.

(4) Tank installation notices shall be accompanied by a summary sheet that details the number and size of tanks installed during the preceding month.

(5) The company representative shall sign the summary sheet verifying the information is correct.

(6) The appropriate tank installation fees shall accompany the tank installation notices and summary sheet. The fee for the liquefied petroleum gas program is located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04

837-030-0250

Inspection of Tank Installations

(1) State Fire Marshal Deputies or State Fire Marshal assistants shall inspect a certain number of reported tank installations.

(2) Inspection records shall be maintained at the Office of State Fire Marshal.

(3) Tank installation companies shall be notified in writing by an inspection notice when a tank installation is not in compliance with State Fire Marshal requirements.

(4) The State Fire Marshal shall notify the company of:

- (a) Necessary corrections to bring the installation into compliance;
- (b) The number of days (shall not exceed 60 days) the company has to bring the installation into compliance.

(5) The installing company shall notify the State Fire Marshal that the corrections have been made to bring the installation into compliance, as follows:

- (a) The date the corrections were made shall be in writing; and
- (b) Shall be mailed to the Office of State Fire Marshal.

(6) Corrections not made and/or not reported within the number of days allowed to bring the installation into compliance, are subject to fees for the liquefied petroleum gas program located in Oregon Revised Statute as follows: ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.450

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04

837-030-0280

Fees/Penalties

(1) Fees for the liquefied petroleum gas program are located in Oregon Revised Statute as follows:

(a) Company License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(b) Fitter License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(c) Truck Equipment Operator License — ORS 480.436 License fees; term of licenses; delinquency penalty.

(d) Bulk Plant Inspection Fee — ORS 480.440 Inspection of certain storage tanks. (Excludes initial inspection during plant construction)

(e) Delivery Unit Inspection Fee — ORS 480.440 Inspection of certain storage tanks.

(2) Tank Installation Fees are:

(a) All tanks ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(b) Multiple tanks at the site have a total combined capacity of 200 gallons or less — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(3) Reinspection Fees — ORS 480.450 Notice of new installations; inspection fees; inspections after original inspection; notice of changes; correction of improper installations required.

(4) Motor Fuel Tank Installation Fees for each motor fuel tank installed — ORS 480.440 Inspection of certain storage tanks.

(5) 10 year tank inspection fee — ORS 480.440 Inspection of certain storage tanks.

(6) Penalty Fees as follows: ORS 480.436 License fees; term of licenses; delinquency penalty.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.436, 480.440, 480.450, & 480.460

Hist.: FM 3-1995, f. & cert. ef. 11-14-95; OSFM 3-1999(Temp), f. & cert. ef. 7-23-99 thru 1-18-00; OSFM 1-2000(Temp), f. & cert. ef. 1-18-00 thru 4-15-00; OSFM 4-2000, f. & cert. ef. 4-12-00; OSFM 5-2003(Temp), f. & cert. ef. 11-4-03 thru 12-31-03; OSFM 2-2004, f. & cert. ef. 1-14-04

Adm. Order No.: OSFM 3-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 12-1-03

Rules Amended: 837-012-0645, 837-012-0720, 837-012-0830, 837-012-0850

Subject: The Office of State Fire Marshal held a hearing on December 15, 2003, on proposed amendments to these rules. The hearing included an opportunity for public comment. Revisions to these rules pertain to definitions, clarification of language, and general house-keeping items.

Rules Coordinator: Glen Andreassen—(503) 373-1540, ext. 210

ADMINISTRATIVE RULES

837-012-0645

Sales and Storage of Retail Fireworks

(1) A Retail Sales Outlet shall never be left unattended during the business hours of the outlet. Any Retail Sales Outlet in violation of these rules may be subject to closure.

(2) The Retail Permit holder or the Individual Responsible for Sales shall be present at the Retail Sales Outlet at least 50% of the outlet's business hours each day. When not present at the outlet, the Individual Responsible for Sales shall be readily available, day or night, by telephone or other reliable means of communication. The Individual Responsible for sales may be absent from the Retail Sales Outlet for up to 48 consecutive hours twice during the period of time the Retail Permit is valid. The two 48-hour time periods shall not be consecutive. The Individual Responsible for sales, when not at the Retail Site, shall be available through their 24-hour contact number listed on their Permit Application.

(3) Any time the Individual Responsible for Sales is not present at the Retail Sales Outlet during the business hours of the outlet, at least one Individual, 18 years of age or older, shall be present at the outlet. Such Individual shall be an Employee or Volunteer of the Retail Permit holder's volunteer non-profit organization. Such Individual shall be directly responsible for, and in charge of, the Retail Sales Outlet and shall be present in the Retail Sales Outlet at all times.

(4) The Individual Responsible for Sales shall be:

(a) The Retail Permit holder listed on the Retail Permit; or

(b) An Employee of the Retail Permit holder; or

(c) If the Retail Permit holder is a volunteer, non-profit organization, an Individual who is a member of the Retail permit holder's volunteer non-profit organization.

(5) The Individual Responsible for Sales shall be responsible for only the Retail Sales Outlet listed on the Retail Permit.

(6) The Retail Site may be changed if:

(a) The new Retail Site is located in the same fire jurisdiction as the Retail Site listed in the Retail Permit;

(b) The Local Fire Authority approves the new Retail Site and indicates that approval in writing; and

(c) The Office of State Fire Marshal is notified of the change at least 24 hours prior to the commencement of retail sales.

(7) Retail Fireworks shall be sold only at a Retail Sales Outlet for which a Retail Permit has been issued.

(8) Retail Fireworks shall not be sold or otherwise provided from an establishment or business that serves alcoholic beverages, single or multi-family residences, an Internet site, or automobiles.

(9) All Retail Sales Outlets shall comply with all applicable federal, state and local laws, rules and regulations pertaining to Fireworks including:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) Oregon Structural Specialty Code, 1998 Edition; and

(d) Oregon Uniform Fire Code, 1998 Edition.

(10) All Retail Fireworks not sold during the time the Retail Permit is valid, shall be returned to the supplying Wholesaler no later than July 31 of the year in which the permit is valid.

(11) At all times during the business hours of the Retail Sales Outlet, no Exits shall be locked or blocked and all exits shall be passable.

(12) No Fireworks shall be discharged within 100 feet of any Retail Sales Outlet.

(13) The Retail Permit holder, Individual Responsible for Sales, and any Employees or Volunteers of the Retail Permit holder shall ensure that all Retail Fireworks sold or otherwise provided, possessed, transported, stored or offered for sale comply with ORS 480.110 through 480.165 and these rules.

(14) The type of Retail Sales Outlet (Tent, Stand, Canopy or trailer) to be utilized shall be described on the Permit Application, including its outside dimensions. The dimensions of the Retail Sales Outlet listed on the Permit Application shall not increase, but they may decrease, after the Permit Application is submitted to the Office of State Fire Marshal.

(15) Retail Permit holders may store their Retail Fireworks from June 1 through July 31 of the year in which their Retail Permit is valid. The Local Fire Authority shall approve the storage and the storage location of the Retail Fireworks and indicate that approval by signing the Permit Application.

(16) Retail Fireworks shall be stored:

(a) In compliance with the Oregon Structural Specialty Code, 1998 Edition; or

(b) In an explosives magazine pursuant to NFPA 495, 1996 Edition.

(Publications referenced are available from the agency.)

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110-480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0720

Definitions

For the purpose of these rules, the following definitions apply to OAR 837-012-0700 through 837-012-0970:

(1) "Aerial Fireworks" means Fireworks that function in the air.

(2) "Aerial Shell" means a cylindrical or spherical cartridge containing pyrotechnic compositions, a long fuse or Electric Match wires, and a black powder Lift Charge.

(3) "Agricultural Fireworks" Shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(4) "Approved Applicant" means any Individual that meets the requirements of OAR chapter 837, division 12.

(5) "Assistant" means an Individual as set forth by OAR 837-012-0780 who works under the direction of an Operator to put on a Fireworks Display.

(6) "Barge" means a floating vessel or a floating platform.

(7) "Barrage" means a rapid-fire sequence of Aerial Fireworks. Mortars are loaded prior to the Display and the Aerial Shells are chain fused to fire in rapid sequence.

(8) "Black Match" means fuse made from string impregnated with black powder and used for igniting Fireworks devices.

(9) "Break" means an individual burst from an Aerial Shell, generally either producing a visual effect (stars) or noise (Salute). Aerial Shells can be either single-Break (having only one burst) or multi-Break (having two or more bursts).

(10) "Burst" means Break.

(11) "Burst Charge" means the composition in an Aerial Shell that, when ignited by the time fuse, ruptures the shell casing, ignites the shell contents and disperses the shell contents into the sky.

(12) "Cake Device" means Multi-shot Device.

(13) "Chain Fusing" means a series of two or more Aerial Shells used to fire in sequence from a single ignition. Finales and Barrages typically are Chain Fused.

(14) "Comet" means a firework consisting of a large pellet of pyrotechnic composition that is ignited and propelled from a Mortar tube by a black powder charge.

(15) "Designated Agent" means the Individual designated by the Permit Holder to pick up the Fireworks authorized by the Permit from an Oregon licensed Wholesaler when the Permit Holder is unable to pick up the Fireworks. The Designated Agent Shall have the Permit authorized by the State Fire Marshal in their possession at the time the Fireworks are picked up from the Wholesaler.

(16) "Discharge Site" means the area immediately surrounding the area where Fireworks are ignited for an outdoor Display.

(17) "Display" means an outdoor General or Limited Fireworks Display or an indoor or outdoor Fireworks Display using Special Effects Fireworks.

(18) "Display Fireworks" Shall mean Fireworks that are authorized under a General, Limited, or Special Effects Display Permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(19) "Display Permit Application" Shall mean the form(s) and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Limited, General, or Special Effects Display Permit.

(20) "Display Site" Shall mean the immediate area where a Fireworks Display is conducted and Shall include the Discharge Site, the Fallout Area, and the required separation distance from Fireworks Discharge Site to spectator viewing areas. The Display Site does not include spectator viewing areas or vehicle parking areas.

(21) "Dud" A Firework that leaves the mortar and returns to earth without producing the intended Break or effect.

(22) "Electric Match" means a device consisting of wires terminating at a relatively high resistance element surrounded with a small quantity of heat-sensitive Fireworks composition. When a sufficient electric current is passed through the wire circuit, the heat that is generated ignites the Fireworks composition, producing a small burst of flame.

(23) "Electrical Firing Unit" means the source of electrical current used to ignite Electric Matches. Generally, the firing unit will have switches to control the firing order and Shall have test circuits and warning indicator, etc.

ADMINISTRATIVE RULES

(24) "Electrical Ignition" means a technique used to discharge Fireworks in which an Electric Match and source of electric current are used to ignite fuses or Lift Charges.

(25) "Exempt Fireworks" Shall mean Novelties and Trick Noisemakers.

(26) "Fall-Out Area" means the area over which Aerial Shells are fired. The shells burst over this area, and unsafe debris and malfunctioning Aerial Shells fall into this area. The Fall-Out Area is the location where a typical Aerial Shell dud will fall to the ground considering wind and the angle of Mortar placement. At a minimum, the Fall Out Area Shall be the required separation distance based on table of distances listed OAR 837-012-0840.

(27) "Finale" means a rapid-fire sequence (Barrage) of Aerial Fireworks, typically fired at the end of a Display. The Mortars are loaded prior to the Display, and the Aerial Shells are Chain Fused to fire in rapid sequence.

(28) "Fireworks" Shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks, Special Effects Fireworks, and Agricultural Fireworks. The term does not include Exempt Fireworks.

(29) "Fireworks Detonation" means the entire contents of the Aerial Shell and the life charge are consumed in one simultaneous explosion at or near the bottom of the Mortar.

(30) "Flash Powder" means explosive composition intended for use in firecrackers and Salutes. Flash Powder produces an audible report and a flash of light when ignited. Typical Flash Powder composition contains potassium chlorate or potassium perchlorate, sulfur or antimony sulfide, and powdered aluminum.

(31) "Flower Pot" means an Aerial Shell that Bursts before it leaves the Mortar, projecting its contents out of the Mortar similar to a mine. The force of the Aerial Shell Bursting usually does not rupture the Mortar.

(32) "Fusee" means a highway distress flare, sometimes used to ignite Fireworks at outdoor Displays.

(33) "General Display Operator" means an Individual who has been issued a General Display Operator Certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an Operator on a General or Limited Display.

(34) "General Display Permit" means a Permit to hold an outdoor Display using 1.3g Fireworks. General Displays may also include 1.4g Fireworks or Special Effects Fireworks.

(35) "General Fireworks Display" means a Display held outdoors, utilizing 1.3g Fireworks and may include 1.4g Fireworks and Special Effects Fireworks and Shall be conducted by a General Display Operator.

(36) "General Operator Certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an Operator at a General Fireworks Display.

(37) "Ground Display Piece" means a Firework that functions on the ground (as opposed to an Aerial Shell that functions in the air). Typical ground Fireworks Display pieces include fountains, roman candles, wheels, and "set pieces".

(38) "Individual" Shall mean a single human being.

(39) "Individual Member of the General Public" means any Person who has not been issued a Wholesale Permit, a Display Permit, a Retail Permit or an Agricultural Permit by the Office of State Fire Marshal.

(40) "Instructor" Shall mean the Individual who delivers the training required under OAR 837-012-0780.

(41) "Lance" means a thin cardboard tube packed with a color producing pyrotechnic composition and used to construct Ground Display Pieces.

(42) "Law Enforcement Authority" means any law enforcement official having jurisdiction over the public Fireworks Display Site.

(43) "Lead Fuse" means a Fireworks fuse made of Quick Match that transfers fire from an ignition source to the Lift Charge of an Aerial Shell or other Fireworks.

(44) "Lift Charge" means composition in an Aerial Shell that propels the Aerial Shell into the air when ignited.

(45) "Limited Fireworks Display" means a Display held outdoors limited to 1.4G Fireworks. Fireworks authorized by the Limited Permit are subject to limitation by the Local Fire Authority and/or the Office of State Fire Marshal.

(46) "Limited Display Operator" means an Individual who has been issued a Limited Display Operator Certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an Operator on a Limited Display.

(47) "Limited Display Permit" means a Permit to hold a Display using 1.4g Fireworks.

(48) "Limited Operator Certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an Operator at a Limited Fireworks Display.

(49) "Local Fire Authority" Shall mean the local fire official having jurisdiction over the Display Site and/or the site where Fireworks may be stored prior to the date and time of the Display.

(50) "Low Break" means an Aerial Shell that functions significantly lower than its prescribed height.

(51) "Manual Firing" means using a handheld ignition source such as a Fusee or Portfire to ignite Fireworks.

(52) "Mine" means a device designed to project stars and other effects, such as whistles and firecrackers into the air from a Mortar charged by black powder that ignites the contents of the Mine.

(53) "Misfire" means a Firework fails to function after an ignition source is applied to the ignition point.

(54) "Monitor" means an Individual designated by the Sponsors of the Display to keep the audience in the intended viewing area and out of the Display Site, Discharge Site and Fallout Area.

(55) "Mortar" Shall mean a tube from which Aerial Shells are fired into the air.

(56) "Mortar Rack" means a frame containing Mortars and are most often used for Barrages and Finales and in electrically ignited General Fireworks Displays.

(57) "Mortar Trough" means an aboveground structure filled with sand or similar materials in which Mortars are positioned for use in General Fireworks Displays.

(58) "Multi-break Shell" means a cylindrical Aerial Shell with more than one main compartment connected with internal fusing and performs with successive breaks. An Aerial Shell with more than one distinctive type of effect contained within one main compartment is not a Multi-break Shell.

(59) "Multi-Shot Device" means a Firework consisting of more than one tube each containing a Firework item. It is ignited once with each of its tubes chain fused together to fire in succession until all tubes have been fired.

(60) "Muzzle Break" means an Aerial Shell that Bursts immediately as it leaves the Mortar.

(61) "Operator" means the Individual qualified as set forth in OAR 837-012-0780 to conduct the Display.

(62) "Operator Certificate Application" Shall mean the form(s) and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Limited Operator Certificate or a General Operator Certificate.

(63) "Peanut Shell" means two or more Aerial Shells in a common wrapper propelled by the same lift charge with separate external time fuses.

(64) "Permit" means the official written document issued by the Office of State Fire Marshal authorizing a Display allowing the Permit Holder to purchase Fireworks for the Display as detailed on the Permit when otherwise in conformance with OAR chapter 837 division 12.

(65) "Permit Holder" means the Person as listed on the Display Permit as the Person to whom the Permit is issued.

(66) "Person" means one or more Individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group or Persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(67) "Portfire" means a tube containing slow burning pyrotechnic composition sometimes used to ignite Fireworks at a Limited or General Fireworks Display.

(68) "Quick Match" means a Black Match encased in a loose fitting sheath and is used in fuses for Aerial Shells and for simultaneous ignition of Fireworks such as Lances in a Ground Display Piece.

(69) "Ready Box" means a container used for the storage of Fireworks at a Fireworks Discharge Site.

(70) "Retail Fireworks" Shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flutter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a Firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(71) "Roman Candle" means a cardboard tube containing Firework stars which, when lit, are expelled into the air at timed intervals.

(72) "Safety Cap" means a paper tube, closed at one end, that is placed over the end of a Fireworks fuse to protect the fuse from damage or accidental ignition.

(73) "Salute" means a special Firework that is designed to produce a loud report.

ADMINISTRATIVE RULES

(74) "Set Piece" means a Ground Display Piece usually consisting of land and Quick Match arranged on a frame.

(75) "Sell" Shall mean to transfer possession of property from one Person to another Person for consideration.

(76) "Shall" means that the rule establishes a mandatory requirement.

(77) "Special Effects Display" Shall mean a Display held either indoors or outdoors limited to Special Effects Fireworks authorized by the Special Effects Permit.

(78) "Special Effects Fireworks" Shall mean any effect created by utilizing flammable, combustible or explosive composition or substance, or any combination of such compositions or substances, or any articles including Fireworks, explosives, or smoke which are prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and/or fire and are primarily designed or discharged in connection with performances, events, gatherings, television, radio, theater, motion picture productions, or similar venues which may or may not be presented before live audiences.

(79) "Special Effects Permit" Shall mean a Permit to hold a Display using Special Effects Fireworks.

(80) "Sponsor" means the Person that has applied for and been issued a Display Permit.

(81) "Sticky Match" means the trademarked name for a type of match that uses a continuous black powder trail inside a wrapper that is prepared with exposed adhesive along its length. The adhesive is used to attach Sticky Match to Fireworks devices.

(82) "Supervision" means Displays Shall be under the Supervision of the Law Enforcement Authority, Local Fire Authority, and/or the Office of State Fire Marshal.

(83) "Training Course" Shall mean the course that is required under OAR 837-012-0780.

(84) "Wholesaler" Shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means, Fireworks, Retail Fireworks, Display Fireworks, or Agricultural Fireworks.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - ORS 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0830

Denial, Suspension and/or Revocation of Display Permit or General or Limited Operator Certificate

(1) The State Fire Marshal may deny, revoke or suspend a Display Permit or General or Limited Operator Certificate when a Person listed on the Display Permit or Operator Certificate fails to comply with ORS 480.110 through 480.165, OAR chapter 837, division 12 or any other applicable federal, state or local law, rule or regulation pertaining to Fireworks.

(2) Any such denial, revocation, or suspension Shall be in conformance with ORS 183.310 to 183.550.

(a) A Person named on the Permit Application fails to comply with applicable federal, state, or local laws, rules, ordinances or regulations pertaining to the manufacture, sale, use, discharge, transportation, storage or possession of Fireworks; or

(b) The Office of State Fire Marshal is presented with evidence and a recommendation to deny, suspend and/or revoke an Application, or Permit by fire or law enforcement authority. The evidence Shall support the conclusion that the Sponsor, Permit Holder, or applicant has violated applicable rules and/or statutes; or

(c) The Permit Holder knowingly hires, employs, utilizes, etc., someone who has had a Wholesale, Retail or Display Permit has been revoked, denied or suspended within the last three years; or

(d) There has been a failure to obtain and maintain necessary local or state on-site inspections, approvals, proof of liability insurance and other required permits; or

(e) Sells, donates or otherwise provides Fireworks to any Person; or

(f) A Permit, or permit number that has expired, or that does not exist, or which has not been issued, is used to support the purchase, use, discharge, transportation, storage, possession or sale of Fireworks; or

(g) The applicant submitted a fraudulent Permit Application; or

(h) Any other violation of the Fireworks statutes or rules.

(3) The period of denial, revocation and/or suspension Shall not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal Shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety, particularly whether the circumstances of the violation(s) presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the holder of, or applicant for, a Display Permit or Operator Certificate; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(4) Suspension or revocation of a Display Permit or Operator Certificate may include suspension or revocation of the current Permit or Certificate and the right to apply for a subsequent Permit or Certificate.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110-ORS 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04

837-012-0850

Construction of Fireworks Aerial Shells

(1) Shells Shall be classified and described only in terms of the inside diameter of the Mortar in which they can be safely used (e.g., three inch shells are only for use in three inch Mortars);

(2) Aerial Shells Shall be constructed so that they fit easily into the appropriate size Mortar and so that the Lift Charge and internal delay fuse are appropriate to propel the shell to a safe altitude before functioning.

(3) Shells Shall be labeled with the type of shell, the shell size and the name of the manufacturer or distributor.

(4) The label or wrapper of any type of Aerial Shell Shall be conspicuously marked with a number to indicate the shell size (the diameter of the Mortar to be used).

(5) The label or wrapper of any type of aerial Salute Shall be conspicuously marked with the word "Salute";

(6) For Aerial Shells using Quick Match fuse to ignite the Lift Charge, that fuse Shall be long enough to allow not less than six inches of fuse to protrude from the Mortar after the shell has been properly inserted.

EXCEPTION: This requirement does not apply when shells are to be fired electrically.

(7) In order to allow the Individual igniting the Aerial Shells to safely retreat, the time delay between igniting the tip of the shell's fuse and the firing of the shell Shall not be less than three seconds or more than six seconds.

EXCEPTION: For electrically ignited Displays, there is no requirement for a delay period.

(8) A Safety Cap Shall be installed over the exposed end of the fuse. The Safety Cap Shall be of a different color than that of the fuse. The Safety Cap Shall be installed in such a manner that the fuse is not damaged;

EXCEPTION: For electrically fired Displays, there is no requirement for Safety Caps except that there Shall be no exposed pyrotechnic composition.

(9) Single Break Salute shells Shall not exceed three inch in diameter or three inch in length (exclusive of the propellant charge). The maximum quantity of Salute powder in such Salutes Shall not exceed 3 ounces;

(10) Storage of Aerial Shells not in Mortars:

(a) All Fireworks Shall be stored and transported according to the requirements of prior to reaching the Display Site. (See also CFR Title 27, Part 18, Subparts J and JJ.);

(b) As soon as the Fireworks have been delivered to the Display Site, they Shall not be left unattended nor Shall they be allowed to become wet;

(c) All shells Shall be inspected upon delivery to the Display Site by the Operator. Any shells having tears, leaks, broken fuses, or showing signs of having been wet Shall be set aside and Shall not be fired. After the Display, any such shells Shall either be returned to the Wholesaler or destroyed according to the Wholesaler's instructions;

EXCEPTION: Minor repairs to fuses Shall be allowed. Also, for electrically ignited Displays, attachment of Electric Matches and other similar tasks Shall be permitted.

(d) Upon delivery to the Display Site, all shells Shall be separated according to size and as to whether they are Salutes. Until they are loaded into Mortars, shells Shall be stored in covered containers such as Ready Boxes or corrugated cartons meeting U.S. Department of Transportation requirements for the transportation of Fireworks;

(e) During performance of an outdoor Display, Ready Boxes Shall be located at a distance of not less than 25 feet upwind from the Mortar placements. If the wind should shift during a Display, the Ready Boxes Shall be located so as to be upwind from the Discharge Site.

EXCEPTIONS:

-1- When acceptable to the Local Fire Authority, alternate measures Shall be taken.

-2- When there are no shells needing storage during a Display, such as for an electrically ignited Display, there is no need for Ready Boxes.

(11) Installation of Mortars:

(a) Prior to placement Mortars Shall be carefully inspected for defects, such as dents, bent ends, damaged interiors, and damaged plugs. Mortars found to be defective Shall not be used;

ADMINISTRATIVE RULES

(b) Mortars Shall be positioned so that shells are propelled away from spectators and over a Fallout Area. Under no circumstances Shall Mortars be angled toward the spectator viewing areas;

(c) Mortars Shall be buried to a depth of at least 2/3 to 3/4 of their length, either in the ground or in aboveground troughs or drums;

EXCEPTION: Securely positioned Mortar Racks may be used for the firing of single Break shells not exceeding six inches in diameter.

(d) Under conditions when paper Mortars may be damaged by placement in damp ground, paper Mortars Shall be placed inside a moisture-resistant bag prior to placement in damp ground;

(e) Whenever there is the likelihood of ground water leaking into the Mortar, the Mortar Shall be placed inside a water-resistant bag prior to placement in the ground;

(f) Weather-resistant coverings Shall be placed over the mouth of Mortars whenever there is imminent danger of water collecting in the Mortars;

(g) In soft ground, when there is significant danger of the Mortars being driven further into the ground when they are fired, sufficient added support Shall be placed beneath the Mortars;

EXCEPTION: When a Mortar is only to be used once, such as for an electrically fired Display, added support Shall be optional.

(h) Mortars that are buried in the ground, in troughs, or in drums Shall be separated from adjacent Mortars by a distance at least equal to the diameter of the Mortar. Mortars in troughs or drums Shall be positioned to afford the maximum protection to the shooter;

EXCEPTION: The requirements Shall not apply when electrical firing is used.

(i) If troughs and drums are used, they Shall be filled with sand or soft dirt; in no case Shall stones or other possible dangerous debris be present;

(j) Whenever more than three shells are to be Chain Fused, such as for sequential firing, additional measures are required to prevent adjacent Mortars from being repositioned in the event that a shell detonates in a Mortar, causing it to burst. For buried Mortars, this Shall be accomplished by placing the Mortars with a minimum separation of four times their diameter. For Mortars in racks, this Shall be accomplished by using Mortar Racks that have sufficient strength to successfully withstand such a failure;

EXCEPTIONS:

-1- When there is doubt concerning the strength of racks holding Chain Fused Mortars, the separation distances for those racks Shall be twice those listed in Table 1.

-2- When the separation distance is two times that required in Table 1, buried Mortars Shall be separated by a minimum of one times the internal diameter of the largest Mortar in the sequence.

(k) When Mortars are to be reloaded during a Display, Mortars of various sizes Shall not be intermixed. Mortars of the same size Shall be placed in groups, and the groups must be separated from one another;

(l) When Operators or Assistants are to be in the immediate area of the Mortars during a Display, sand bags or other suitable protection Shall be placed around the Mortars up to the approximate level of the mouth of the Mortar in each direction where Operators or Assistants could be located;

(m) Mortars Shall be inspected before the first shells are loaded to be certain that no water or debris has been accumulated in the bottom of the Mortar;

(n) Mortars Shall be of sufficient strength and durability to safely fire the Aerial Shells to be used;

(o) Cast iron Mortars Shall not be used;

(p) Metal Mortars Shall be either seamed or seamless; however, seamed Mortars must be placed such that the seam is facing either right or left as one faces the line of Mortars;

(q) Mortars Shall be of sufficient length to cause Aerial Shells to be propelled to safe heights;

(r) A cleaning tool Shall be provided for the cleaning of debris from Mortars as necessary;

EXCEPTION: When Mortars are not to be reloaded during a Display, there is no requirement for a cleaning tool.

(s) Numerals indicating the inside diameter of the Mortar may be conspicuously painted or otherwise marked on the top of all Mortars.

(12) When more than one Operator or Assistant will be igniting the Aerial Shells for a Display, it is preferred that the line of Mortars be separated in some manner and that only one Operator or Assistant light shells in each designated area.

(13) Electrical Firing Unit:

(a) The purpose of this section is to provide guidance for the design of Electrical Firing Units to be used when it is decided to electrically fire Displays;

(b) At no point Shall electrical contact be allowed to occur between any wiring associated with the Electrical Firing Unit and any metal object in contact with the ground;

(c) If the Electrical Firing Unit is powered from AC power lines, some form of line isolation Shall be employed (i.e., a line isolation transformer);

(d) The Electrical Firing Unit Shall include a key-operated switch or other similar device that greatly reduces the possibility that unauthorized or unintentional firings can occur;

EXCEPTION: When the Electrical Firing Unit is very small in size and attached to the wire running to Electric Matches for the brief duration of the actual firing, there is no requirement for a key-operated switch.

(e) Manually activated Electrical Firing Units Shall be designed such that at least two positive actions must be taken to apply electric current to an Electric Match. For example, this may be accomplished with two switches in series, both of which must be operated in order to pass current;

(f) Computer-activated automatic sequencing type Electrical Firing Units Shall have some form of "dead-man-switch," such that firings will cease the moment the switch is released;

(g) If the Electrical Firing Unit has a built-in-test circuit, the unit Shall be designed to limit the test current (into a short circuit) to 0.05 ampere or to 20 percent of the no-fire current of the Electric Match, whichever is less;

(h) Multi-testers such as Volt-Ohm Meters, Shall not be used for testing unless their maximum current delivering potential has been measured and found to meet the requirements of subsection (g) of this section;

(i) When any testing of firing circuits is performed, no Person Shall be allowed to be present in the immediate area of Fireworks that have been attached to the Electrical Firing Unit.

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

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

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110-ORS 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2004, f. & cert. ef. 1-14-04

Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 14-2003

Filed with Sec. of State: 12-22-2003

Certified to be Effective: 12-22-03

Notice Publication Date: 12-1-03

Rules Amended: 259-008-0010, 259-008-0025

Subject: 259-008-0010 Makes language consistent with other portions of the rule that changed the time for certification for police officers, telecommunicators and emergency medical dispatchers to 18 months.

259-008-0025 Corrects rule regarding vehicle pursuit training and exercises to bring in line with enabling statute.

Rules Coordinator: Mary Gaines—(503) 378-2100, ext. 2367

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or before the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as

ADMINISTRATIVE RULES

a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days.

(A) The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness as determined by a thorough background investigation.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language. The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training. Implementation of this rule will take effect within one year from September 1, 2001.

(8) Physical Examination. All law enforcement officers and applicants shall be examined by a licensed physician or surgeon. The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101. Individuals who have had a

successfully completed physical examination (while at the same employer) that is less than two years old at the time of DPSST's receipt of a properly completed DPSST Form F-4 are not required by DPSST to be re-examined. If two years or more have passed since the date of the last successfully completed physical examination (while at the same employer), an individual who is selected for a certifiable position in a discipline in which the individual is not yet certified shall complete and pass a new physical examination.

(a) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision shall be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames shall meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) shall have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) shall be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception shall be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance shall be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(b) Applicants for the position of police or corrections officer must have hearing in both ears sufficient enough to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(c) Applicants for the position of parole and probation officer must have hearing in both ears sufficient to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(d) If amplification device(s) is (are) necessary to meet the criteria in (b) or (c) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers shall achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination shall be at the expense of the applicant and/or the applicant's employing agency. The equipment utilized for all of these evaluations shall be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(e) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(f) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease shall necessitate further medical evaluation.

(A) Resting blood pressure should be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants shall not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

ADMINISTRATIVE RULES

(C) Failure to meet guidelines (f), (A) and (B) requires further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (f), it shall be at the expense of the applicant or hiring authority.

(g) A current-version DPSST Medical Examination Report (**DPSST Form F2**), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination: Must be submitted on all law enforcement applicants. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(h) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(i) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(j) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(k) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. Such supporting documents shall include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing such documentation or testimony shall be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver shall be considered void. If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

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

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers shall satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion shall be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual shall be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Law enforcement officers or telecommunicators who have previously completed the Basic Course, but have not been employed as a law enforcement officer or telecommunicator, as defined in ORS 181.610, subsections (5), (13) (14), and (18), and OAR 259-008-0005, subsections (7), (19), (23), (24), and (33), during the last five (5) years or more, shall satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer or telecommunicator.

(d) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and OAR 259-008-0005(14) and (33) for two and one-half (2 1/2) years or more, shall satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that the applicant has current knowledge and skills to perform as an emergency medical dispatcher.

(e) Previously employed law enforcement officers and telecommunicators, may challenge the Basic Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant shall provide proof of successful completion of prior equivalent training.

(C) The applicant shall provide documentation of the course content with hour and subject breakdown.

(D) The applicant shall obtain a minimum passing score on all written examinations for the course.

(E) The applicant shall demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant shall only be given one opportunity to challenge a course.

(f) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14) and OAR 259-0080005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years shall complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(g) Corrections and police officers who have not completed the Basic Course shall begin training at an academy operated by the Department within 90 days of their initial date of employment. A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(h) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(i) Training on the law, theory, policies and practices related to vehicle pursuit driving shall be included in the basic course for police officers.

(A) Vehicle pursuit training exercises shall be included in the basic course subject to the availability of appropriate facilities and funding.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2 1/2) and five (5) years, shall satisfactorily complete the Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course shall also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position shall satisfactorily complete the prescribed Supervision Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether

ADMINISTRATIVE RULES

the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed a prescribed Supervision Course, within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunications, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete the prescribed Middle Management Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed a prescribed middle management course within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, shall be trained on how to investigate and report cases of missing children.

(A) The above mandated training is subject to the availability of funds.

(d) Federal training programs shall be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03

Department of Revenue Chapter 150

Adm. Order No.: REV 4-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 11-1-03

Rules Adopted: 150-OL 2003 Ch. 541 Sec. 3, 150-314.295, 150-314.665(6)(c), 150-315.113

Rules Amended: 150-305.220(1), 150-305.220(2), 150-314.385(c)-(B), 150-314.505-(A), 150-314.610(1)-(A), 150-314.610(1)-(B), 150-314.610(1)-(C), 150-314.615-(F), 150-314.655(2)-(B), 150-314.840, 150-315.262, 150-316.054, 150-316.127-(D)

Rules Ren. & Amended: 150-314.415(1)(b) to 150-314.415(1)(b)-(B), 150-314.415(1)(c) to 150-314.415(1)(b)-(A)

Subject: These administrative rules adopt, amend, amend, or amend and renumber administrative rules relating to Personal Income Tax, Corporation Income and Excise Tax, and disclosure of information.

Rules Coordinator: Xann-Marie Culver—(503) 947-2099

150-305.220(1)

Computation of Interest on Deficiencies and Delinquencies

(1) *Adjustment to statutory rate.* For interest periods beginning on or after January 1, 2004, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of .5 percent per month (6 percent annually). For a fraction of a month, interest will be computed at .0164 percent per day.

(2) *Interest starting date.* The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) *Interest periods.* An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be figured on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) *Interest rates.* The following table shows interest rates and interest periods used by the Oregon Department of Revenue to figure interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) *Decimal places used in computations.* In all computations, the interest rate will consist of six decimal places. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03

150-305.220(2)

Interest on Refunds

(1) *Adjustment to statutory rate.* For interest periods beginning on or after January 1, 2004, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of .5 percent per month (6 percent annually). For a fraction of a month, interest will be computed at .0164 percent per day.

(2) *Interest starting date.* The interest starting date will be 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is later.

(3) *Interest periods.* An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be figured on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) *Interest rates.* For interest periods beginning on or after June 1, 1983, the interest rate will be the same as the interest rate on deficiencies and delinquencies.

(5) *Decimal places used in computations.* In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates and interest periods used by the Oregon Department of Revenue to figure interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03

150-314.295

Disallowance of Certain Intercompany Transactions Involving Intangible Assets

(1) The provisions of section (3) of this rule apply in situations where:

(a) An intangible asset is owned by one corporation, organization, trade or business (the owner) and used by another (the user) for a royalty or other fee,

(b) Both the owner and the user are "owned by the same interests", as defined in Treas. Reg. §1.469-4T, paragraph (j),

(c) The owner and the user are not included in the same Oregon tax return, and

(d) The separation of ownership of the intangible asset from the user of the intangible asset results in either:

(A) Evasion of tax, or

(B) A computation of Oregon taxable income that is not clearly reflective of the business activity conducted in Oregon in comparison to business activity as a whole.

(2) For purposes of this rule, separation of the ownership and use of an intangible asset is for "evasion of taxes" when such separation has no effect on the operations of the user beyond payment of the royalty or other fee.

ADMINISTRATIVE RULES

(3) The user of the intangible asset must add the royalty or other expense for such use to federal taxable income as an "other addition" on the Oregon tax return. The owner of the intangible asset must subtract the royalty or other income from such use from federal taxable income as an "other subtraction" on the Oregon tax return. The following example is for illustrative purposes only.

Example: Alpha Corporation (Alpha) uses a number of trademarks in its retail sales business. After developing the value of the trademarks over a period of 30 years, Alpha incorporated a subsidiary, Beta, Inc. (Beta) in Bermuda and transferred the trademarks to Beta for shares of newly issued Beta stock. Alpha paid royalties to Beta for use of the trademarks. Beta is not included in Alpha's consolidated federal and Oregon tax returns. After the transfer of the trademarks to Beta, Alpha uses the trademarks as it had before the transfer and the only change in its business operation is the payment of the royalty. The transfer of the trademarks does not change Alpha's business operations as they are readily apparent to or as they affect relations with customers, vendors or other external parties. Alpha requires that Beta manage the trademarks as Alpha had before the transfer. Alpha must add the royalty deduction back to federal taxable income on its Oregon Corporation Excise Tax return. If Beta is subject to Oregon taxation, the royalty income must be subtracted from its federal taxable income.

[Publications: Publications reference in this rule are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.295

Hist.: REV 4-2003, f. & cert. ef. 12-31-03

150-314.385(c)-(B)

Time Limitations for Persons Outside United States

The Department will waive penalty (but not interest) for delinquent filing and delinquent payment of tax by taxpayers who qualify for the automatic two month extension for filing under Treasury Regulation 1.6081-5. This regulation grants an automatic extension of time, for federal purposes, to file a return and pay the tax due by the fifteenth day of the sixth month following the close of the tax year. To qualify, a taxpayer must reside outside the United States and Puerto Rico on the original due date of the return. A taxpayer must have filed a return and paid the tax due within the federal extension period in order to receive this waiver. This is not an extension of time for filing but only a waiver of the delinquency penalty. Accordingly, a return filed under these circumstances will be considered delinquent.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.305

Hist.: 12-70; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-314.407-(C); REV 4-2003, f. & cert. ef. 12-31-03

150-314.415(1)(b)-(A)

Refunds

(1) The return of the taxpayer, filed timely and in the prescribed manner, constitutes a claim for refund under the provisions of this section. For the purpose of determining when the three-year period for claiming a refund expires, the due date of a return is the statutory due date, not the due date after extension.

(2) The department will refund the excess tax paid whenever the review required by statute is completed, even if the date of refund is more than three years after the due date of the return.

Example 1: Simon filed his 1999 Oregon personal income tax return on April 1, 2003, requesting a refund. The department reviewed and processed the return in mid-May of that year. Although the refund payment would be outside the three year statute for refunds, the department can make the payment because Simon filed his return within the statute of limitations period.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1-69; 11-71; 12-31-83, Renumbered from 150-316.192 to 150-314.415(1)(b); 12-31-85, Renumbered from 150-314.415(1)(b); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; Renumbered from 150-314.415(1)(c) by REV 4-2003, f. & cert. ef. 12-31-03

150-314.415(1)(b)-(B)

Minimum Check Amount

(1) The department is prohibited by statute from issuing refunds of less than the minimum allowed by ORS 314.415 after reduction for amounts owed. The department will not apply a refund less than the minimum to a subsequent year's estimated tax account or to a charitable check-off.

(2) Refunds from all tax programs may be offset against delinquent accounts as specified in OAR 150-314.415(1)-(e)-(B). Refunds of money received for miscellaneous purposes, such as photocopies of returns, purchase of publications, etc., may be offset against delinquent accounts if the refund is more than \$10.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 10-5-83, 12-31-85, Renumbered from 150-314.415(1)(d)-(C); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(1)(b) by REV 4-2003, f. & cert. ef. 12-31-03

150-314.505-(A)

Estimated Tax: When Estimates Are Required

(1) Every corporation or group of corporations filing a consolidated Oregon return expecting to have an excise or income tax liability of \$500 or more must file an estimate of its liability on Form 20-ES. Estimated tax liability means the tax as computed under ORS Chapter 317 or 318, less allowable credits. For purposes of determining whether estimated tax liability exceeds \$500, a credit resulting from overpayment of tax for a prior year shall not be taken into account.

(2) Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. Where taxpayers establish to the satisfaction of the department that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return. Examples of fact situations that may be considered sufficient to warrant a refund are as follows:

Example 1: Estimated tax payments were made by a corporation that qualified as an S corporation for the entire tax year through the date the refund is requested.

Example 2: Estimated tax payments were made by a corporation that will not be required to file a return for the tax year for which the estimated tax payments were made.

Example 3: The estimated tax payments were intended for the Internal Revenue Service but were sent to the Department of Revenue in error. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon tax return.

Example 4: Taxpayer provides proof that the taxpayer intended the payment for another account or liability and the payment was misapplied to their estimated tax by the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.505

Hist.: 9-74; 12-1975; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 4-2003, f. & cert. ef. 12-31-03

150-314.610(1)-(A)

Business and Nonbusiness Income Defined

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and ORS 314.605 to 314.670.

(1) Apportionment and Allocation. ORS 314.610(1) and (5) require that every item of income be classified either as business income or non-business income. Income for purposes of classification as business or non-business includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(2) Business Income. Business income means income of any type or class, and from any activity, that meets the relationship described either in (4), the "transactional test", or (5), the "functional test". The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or non-business income.

(3) Terms Used in Definition of Business Income and in Application of Definition. As used in the definition of business income and/or in the application of the definition,

(a) "Taxpayer" means any corporation subject either to ORS Chapter 317 or 318, or both, or a nonresident individual subject to ORS Chapter 316.

(b) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" refers to the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Oregon.

(f) "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

ADMINISTRATIVE RULES

(4) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(a) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Oregon, the resulting income of the transaction or activity is business income for Oregon. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Oregon.

(b) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(5) Functional test. Business income also includes income from tangible and intangible property, if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. "Acquisition" refers to the act of obtaining an interest in property. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner which materially contributed to the production of business income.

(a) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within this State. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time (generally, five years is sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(b) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. (Property that has been converted to nonbusiness use (see subsection (4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(c) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of

the property is limited to mere financial betterment of the taxpayer in general.

(d) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Oregon.

(e) If with respect to an item of property a taxpayer (i) takes a deduction from business income that is apportioned to Oregon or (ii) includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(f) Application of the functional test is generally unaffected by the form of the property (e.g., tangible or intangible property, real or personal property). Income arising from an intangible interest, as, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. (Property that has been converted to nonbusiness use (see subsection (4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.) Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.

(6) Relationship of transactional and functional tests to U.S. Constitution. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict States from apportioning income as business income that has no rational relationship with the taxing State. The protection against extra-territorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Oregon. The unitary business that is conducted in Oregon includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) be tied to the same trade or business that is being conducted within Oregon. Determination of the scope of the unitary business being conducted in Oregon is without regard to extent to which Oregon requires or permits the filing of a consolidated Oregon return.

(7) Nonbusiness income. Nonbusiness income means all income other than business income.

(8) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100, 305.655, 314.605-314.670

Stats. Implemented: ORS 314.610

Hist.: 12-70; 8-73; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 4-2003, f. & cert. ef. 12-31-03

150-314.610(1)-(B)

Business and Nonbusiness Income; Application of Definitions

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670. The rule applies the principles provided in OAR 150-314.610(1)-(A) for determining whether particular income is business or nonbusiness income. (The examples used throughout this rule are illustrative only and are limited to the facts they contain.)

(1) Rents and royalties from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under OAR 150-314.655(1)-(A). Property that has been converted to nonbusiness use (see OAR 150-314.610(1)-(A)(4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.

Example 1: The taxpayer operates a multistate car rental business. The income from car rentals is business income.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

ADMINISTRATIVE RULES

Example 3: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are held for future use in the trade or business, and are leased to tenants on a short-term basis in the meantime. The rental income is business income.

Example 4: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

Example 5: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not done in furtherance of but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

Example 6: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is business income and the gain on the sale of the plant is business income.

Example 7: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The net rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income.

(2) Gains or losses from sales of assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of, the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income. (See OAR 150-314.655(1)-(A) to 314.655(1)-(D)).

Example 8: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example 9: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

Example 10: Same as Example 9 except that the plant was closed and put up for sale but was not in fact sold until a buyer was found 18 months later. The gain is business income.

Example 11: Same as Example 9 except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

Example 12: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. Because the taxpayer did not intend to reoccupy the old building, the taxpayer rented the old building to an unrelated investment company under a five-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is nonbusiness income.

(3) Interest. Interest income is business income where the intangible with respect to which the interest was received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 13: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

Example 14: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business income.

Example 15: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state and local tax obligations pertaining to the taxpayer's trade or business. The interest income is business income.

Example 16: The taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

Example 17: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling \$200,000 that it regularly invests in short-term interest bearing securities. The interest income is business income.

Example 18: In January the taxpayer sold all the stock of a subsidiary for \$20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income.

(4) Dividends. Dividends are business income where the stock with respect to which the dividends was received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 19: The taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.

Example 20: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on the national stock exchanges. Both the interest and any dividends are business income.

Example 21: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.

Example 22: The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

Example 23: The taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

Example 24: The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness income.

(5) Patent and copyright royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or copyright is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 25: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

Example 26: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its business. Any royalties received on these copyrights are business income.

Example 27: Same as example (26), except that the acquired company also held the patent on a method of producing digital audio recordings. The taxpayer does not manufacture or sell digital audio recordings. Any royalties received on the patent would be nonbusiness income.

(6) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100; 305.655, 314.605-314.670

Stats. Implemented: ORS 314.610

Hist.: 12-70; 8-73; REV 4-2003, f. & cert. ef. 12-31-03

150-314.610(1)-(C)

Proration of Deductions

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670.

(1) Proration of deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business or to several items of nonbusiness income. In such cases the deduction must be prorated among such trades or businesses and such items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(2) Year to year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer must disclose in the return for the current year the nature and extent of the modification.

(3) State to state consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not

ADMINISTRATIVE RULES

uniform in the application or proration of any deduction, the taxpayer must disclose in its return to this state the nature and extent of the variance.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100; 305.655, 314.605-314.670
Stats. Implemented: ORS 314.610
Hist.: 12-70; 8-73; REV 4-2003, f. & cert. ef. 12-31-03

150-314.615-(F)

Apportionment for Long-Term Construction Contracts

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670. If a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from sources within this state, including income from such long-term contracts, is determined pursuant to this rule. In such cases, the first step is to determine what portion of the taxpayer's income constitutes "business income" and "nonbusiness income" under ORS 314.610 and the rules thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of ORS 314.625 to 314.645. The business income of the taxpayer is divided between or among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the taxpayer's entire net income that is subject to tax. For definitions, rules and examples for determining business and non-business income, see ORS 314.610 and the rules thereunder.

(1) Apportionment of Business Income.

(a) *In General.* Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved.

(b) *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price that has been completed during the taxable year exceeds all expenditures made during the taxable year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each such contract.

Example 1: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for \$9,000,000. The contract allowed three years for completion and, as of the end of the second taxable year, the taxpayer's books of account, kept on the accrual method, disclosed the following: [Table not included. See ED. NOTE.]

(c) *Completed Contract Method.* Under this method of accounting, business income derived from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract (see section (2) below). Thus, all receipts and expenditures applicable to such contracts, whether completed or not as of the end of the taxable year, are excluded from business income derived from other sources. For example, income from short-term contracts, interest, rents, royalties, etc., is apportioned by the regular three-factor formula of property, payroll, and sales.

(d) *Property Factor.* In general, the numerator and denominator of the property factor is determined as set forth in ORS 314.655 and the rules thereunder. However, the following special rules are also applicable:

(A) The average value of the taxpayer's costs (including materials and labor) of construction in progress, to the extent such costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) is included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state are included in the numerator of the property factor.

Example 2: The taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its second taxable year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows: [Table not included. See ED. NOTE.]

(B) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though such rental expense may be included in the cost of construction.

(C) The property factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(e) *Payroll Factor.* In general the numerator and denominator of the payroll factor is determined as set forth in ORS 314.660 and the rules thereunder. However, the following special rules are also applicable:

(A) Compensation paid employees that is attributable to a particular construction project is included in the payroll factor, even though it is included in the cost of construction.

(B) Compensation paid to employees engaged in performing services at a construction site are attributed to the state in which the services are performed. Compensation paid all other employees is governed by ORS 314.660(2).

Example 4: A taxpayer engaged in a long-term contract in state X assigns several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes, such compensation is assigned to the numerator of state X.

(C) The payroll factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(f) *Sales Factor.* In general, the numerator and denominator of the sales factor is determined as set forth in ORS 314.665 and the rules thereunder. However, the following special rules are also applicable:

(A) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio that construction costs for the project in this state bear to the total of such construction costs for the entire project during the taxable year. Any other method, such as engineering cost estimates, may be used if it provides a reasonable apportionment.

Example 5: A construction project was undertaken in this state by a calendar-year taxpayer that had elected one of the methods of accounting for long-term contracts. The following gross receipts (progress billings) were derived from the contract during the three taxable years the contract was in progress.

— 1st Year — 2nd Year — 3rd Year
Gross Receipts — \$1,000,000 — \$4,000,000 — \$3,000,000

The gross receipts to be reflected in both the numerator and the denominator of the sales factor for each of the three years are the amounts shown.

Example 6: A taxpayer contracts to build a dam on a river at a point that lies half within this state and half within state X. During the taxpayer's first taxable year, construction costs in this state were \$2,000,000. Total construction costs for the project during the taxable year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. Accordingly, gross receipts of \$1,600,000 ($\$2,000,000 \div \$3,000,000 = 66\frac{2}{3}\% \times \$2,400,000$) are included in the numerator of the sales factor.

(B) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price that corresponds to the percentage of the entire contract completed during the taxable year.

Example 7: A taxpayer that elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current taxable year (the first since starting the project) it estimated that the project was 30 percent completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current taxable year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method for accounting for receipts and disbursements.

(C) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Example 8: A taxpayer that entered into a long-term construction contract elected the completed contract method of accounting. By the end of its current taxable year (the second since starting the project) it had billed and accrued on its books a total of \$5,000,000. Of that amount, \$2,000,000 accrued in the first year the contract was undertaken, and \$3,000,000 accrued in the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$3,000,000.

Example 9: Same facts as in Example 8 except that the taxpayer keeps its books on the cash basis and, as of the end of its current taxable year, had received only \$2,500,000 of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$2,500,000.

(D) The sales factor, except as noted above in paragraphs (B) and (C), is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately.

(g) *Apportionment Percentage.* The apportionment percentage provided in ORS 314.650 is applied to business income to establish the amount apportioned to Oregon.

(2) *Completed Contract Method — Special Computation.* The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed and accepted. Accordingly, a separate computation is made for each such contract completed during the taxable year regardless of whether the project is located within or without this state in order to determine the amount of income attributable to sources within this state. The amount of income apportioned to this state from each contract completed during the taxable year, plus other business income (such as interest income, rents, royalties, income from short-term contracts, etc.) apportioned to this state by the reg-

ADMINISTRATIVE RULES

ular three factor formula, plus all nonbusiness income allocated to this state, is the measure of tax for the taxable year. The amount of income (or loss) from each contract derived from sources within this state using the completed contract method of accounting is computed as follows:

(a) In the taxable year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined in (a) is apportioned to this state by the following method:

(A) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator is the total of all such construction costs for the project.

(B) Each percentage determined in (A) is multiplied by the apportionment formula percentage for that particular year as determined in section (1)(g) of this rule.

(C) The products determined at (B) for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract determined in (a) is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within this state.

Example 10: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts: Contract L in this state, Contract M in state X, and Contract N in state Y. In addition, it has other business income (less expenses) during the taxable year 1986 from interest, rents, and short-term contracts amounting to \$500,000, and nonbusiness income allocable to this state of \$8,000. During 1986, it completed Contract M in state X at a profit of \$900,000. Contracts L in this state and N in state Y were not completed during the taxable year. The apportionment percentages of the taxpayer as determined in subsection (g) of this rule and the percentages of contract costs as determined in subsection (b) above for each year Contract M in state X was in progress are as follows: [Table not included. See ED. NOTE.]

(3) **Computation for Year of Withdrawal, Dissolution or Cessation of Business — Completed Contract Method.** Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution, or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state. The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in section (2)(b) of this rule must be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which that portion of the gross contract price of each such contract that corresponds to the percentage of the entire contract that has been completed as the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

Example 13: A construction contractor qualified to do business in this state elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L was started in Oregon in 1981 and completed at a profit of \$900,000 on December 16, 1983. The taxpayer withdrew on December 31, 1983. Contract M was started in state X in 1982 and was incomplete on December 31, 1983. The apportionment percentages of the taxpayer as determined in section (1) of this rule, and percentages of construction costs as determined in section (2)(b) of this rule for each year during which Contract M in state X was in progress are as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.615

Hist.: f. 12-6-82, ef. 12-31-82, Renumbered from OAR 150-314.670-(D) to OAR 150-314.618-(F), 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 4-2003, f. & cert. ef. 12-31-03

150-314.655(2)-(B)

Property Factor; Valuation of Rented Property

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670.

(1) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

(2) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income they are not deducted from rent paid by the taxpayer for the food market.

Example 2: The taxpayer rents a 5-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses on a short-term basis because it anticipates it will need those two floors for future expansion of its multistate business. The rental of all five floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer.

Example 3: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the 18 floors is not integral to but rather is separate from the operation of the taxpayer's trade or business. Since the subrents are nonbusiness income they are to be deducted from the rent paid by the taxpayer.

(3)(a) If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the department or requested by the taxpayer.

(b) In no case however may such value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

Example 4: The taxpayer rents a 10-story building at an annual rental rate of \$1,000,000. Taxpayer occupies two stories and sublets eight stories for \$1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire year, or \$200,000.

(c) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property must be determined on the basis of a reasonable market rental rate for such property.

(4) "Annual rental rate" is the amount paid as rental for the property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental is the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period must be annualized. If the rental term is for less than 12 months, the rent may not be annualized beyond its term. Rent may not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

Example 5: Taxpayer A, that ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid under a lease with 5 years remaining is \$2,500 a month. The rent for the tax period January 1, to April 30 is \$10,000. After the rent is annualized the net rent is \$30,000 (\$2,500 x 12).

Example 6: Same facts as in Example (5) except that the lease would have terminated on August 31. In this case the annualized net rent is \$20,000 (\$2,500 x 8).

(5) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(a) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

Example 7: A taxpayer, pursuant to the terms of a lease, pays a lessor \$1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of \$400,000. The annual rent is \$16,000 (\$12,000 plus one percent of \$400,000 or \$4,000).

(b) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent must be determined by consideration of the relative values of the rent and the other items.

Example 8: A taxpayer, pursuant to the terms of a lease, pays the lessor \$12,000 a year rent plus taxes in the amount of \$2,000 and interest on a mortgage in the amount of \$1,000. The annual rent is \$15,000.

Example 9: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was \$1,000 of which \$700 was for the use of storage space and \$300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is \$700.

(6) "Annual rent" does not include: (a) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and (b) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental or otherwise.

(7) Payments for lease bonus and delay rental expensed in the current tax year must be treated as rental property and valued at eight times the amount paid.

(8) Leasehold improvements must, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements

ADMINISTRATIVE RULES

revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements must be included in the factor.

(9) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100, 305.655, 314.605-314.670

Stats. Implemented: ORS 314.655

Hist.: 12-70; 8-73; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 4-2003, f. & cert. ef. 12-31-03

150-314.665(6)(c)

Sales Factor: Definition of Gross Receipts

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and ORS 314.605 to 314.670.

(1) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Except as provided in ORS 314.665(6)(a), gross receipts, even if business income, generally do not include such items as:

(a) Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate

of Deposit or similar marketable instrument;

(b) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(c) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(d) Damages and other amounts received as the result of litigation;

(e) Property acquired by an agent on behalf of another;

(f) Tax refunds and other tax benefit recoveries;

(g) Pension reversions;

(h) Contributions to capital (except for sales of securities by securities dealers);

(i) Income from forgiveness of indebtedness; or

(j) Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(2) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of ORS 314.610 through 314.670.

(3) This rule applies to all tax years open to adjustment on or after December 31, 2003.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100, 305.655, Article I, section 2, 314.605-314.670

Stats. Implemented: ORS 315.164

Hist.: REV 4-2003, f. & cert. ef. 12-31-03

150-314.840

Information That May Be Furnished

(1) *Definitions.* For purposes of this rule:

(a) "Taxpayer," includes the executor or personal representative of a decedent's estate or a person who is appointed or authorized by law to pay the taxes of a decedent, and a trustee or other person who, by law, must pay the income taxes of a trust.

(b) An "authorized representative" is a person authorized to represent the taxpayer under ORS 305.230.

(c) A "designee" is a person, firm, organization, or agency designated by a taxpayer to receive the taxpayer's confidential information.

(2) As permitted by law, the department may disclose and give access to information described in ORS 314.835 to certain categories of persons, including, but not limited to:

(a) *Department of Human Services*

(A) Under provisions of ORS 418.135, the Department of Human Services may request in writing any information contained in the department's tax files as to the location, income, and property of parents who, according to the Department of Human Services, have abandoned or deserted or are failing to support their children receiving public assistance. The request must clearly specify the information desired and must supply the information the department requires. The request must contain a certification by the Department of Human Services that the information is being requested pursuant to ORS 418.135. The information must be used only for the purposes specified by the law authorizing the disclosure.

(B) Upon written request of the Department of Human Services, the department will disclose the names, addresses and social security numbers

of applicants for elderly rental assistance under ORS 310.630 to 310.706 as authorized by ORS 314.860. The department must maintain a record of all requests for such disclosure. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(b) *Division of Child Support.* Under the provisions of ORS 418.135 and 180.320, the Division of Child Support of the Department of Justice may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in subparagraph (A) of paragraph (2)(a) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(c) *District Attorneys.* Under provisions of ORS 418.135, the District Attorney of any county in the state may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in subparagraph (A) of paragraph (2)(a) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the law authorizing the disclosure.

(d) *Corporations.* The returns of a corporation will be open to inspection by any officer of the corporation or its authorized representative.

(e) *Partnerships and Limited Liability Partnerships (LLPs).* The return of a partnership or LLP will be open to inspection by any person who was a partner during any part of the tax year covered by the return, provided that a showing satisfactory to the department is made that the person was a partner during the tax year covered by the return. In the event of the death of a partner, the return of the partnership or LLP will be open to inspection by the executor as defined in ORS 118.005 who is responsible for filing an inheritance tax return with respect to the deceased partner. Any person requesting information under this paragraph must make known to the department the reason for the request and the use to be made of the information.

(f) *Limited Liability Companies (LLCs).* Under ORS 63.810, an LLC is classified for tax purposes in the same manner as it is classified for federal income tax purposes. Therefore, if an LLC is classified as a corporation for tax purposes, the returns may be disclosed as provided in section (2)(d) above. If an LLC is classified as a partnership for tax purposes, the returns may be disclosed as provided in section (2)(e) above.

(3) *Conflicting Claims to a Dependency Deduction.* The returns of two taxpayers claiming the same dependent(s) will be open to inspection by those two taxpayers as allowed in ORS 305.215.

(4) *Husband and Wife Filing Separately.* If a husband and wife have filed separate tax returns, neither spouse nor authorized representative will be permitted to inspect the separate return of the other spouse or to obtain any information from it or any related report without first having obtained written consent to do so from such other spouse except as provided in section (3) above.

(5) *Taxpayer, Authorized Representative, or Designee.* Upon request and unless otherwise prohibited by an Internal Revenue Service agreement, the department will permit the taxpayer, the taxpayer's authorized representative, or the taxpayer's designee to obtain copies of the taxpayer's income tax returns filed with the department for any tax year, copies of reports filed by the taxpayer in connection with such returns, and any other information that the department considers necessary in the administration of the tax laws. Upon request and payment of the charges set forth in OAR 150-192.440, the department will furnish copies of these documents. Such requests may be made in person, in writing, or by telephone, e-mail or other generally used means of communication.

(6) *Taxpayer Authorization and Designation.* Taxpayer authorization to disclose to a designee may be in writing, verbal, or implied. See OAR 150-OR Laws 2003, chapter 541, section 3.

(a) The department will recognize that a person is authorized to represent the taxpayer upon the filing with the department or magistrate division of a document signed by the taxpayer clearly authorizing such representation, or if the magistrate division is satisfied that the person is so authorized. If the magistrate division accepts a document signed by a person on behalf of a taxpayer, or has issued an order declaring that the person is authorized to represent the taxpayer, the department will consider the magistrate division to be satisfied that the person is an authorized representative. Unless a written authorization by the taxpayer clearly provides otherwise, the department will presume the person is authorized to represent the taxpayer only with respect to the proceeding before the department or the magistrate division and will disclose only documents and information relating to the tax years at issue in that proceeding.

(b) Only the tax information that relates to the duty of an executor, a decedent estate's personal representative, a person who is appointed by law

ADMINISTRATIVE RULES

to pay the taxes of a decedent, or a trustee or other person who, by law, must pay the income taxes of a trust may be disclosed.

(c) *Power of Attorney.* The department may accept a signed power of attorney as consent from the taxpayer to disclose confidential information. The department may accept a signed power of attorney as a taxpayer's designation to appoint another individual as their agent. The department will not accept a federal power of attorney Form 2848 unless the taxpayer has specifically indicated that it applies to the Oregon Department of Revenue.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.840

Hist.: 11-71; 11-73; 12-19-75; 1-1-77; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; REV 2-1998, f. & cert. ef. 5-1-98; REV 6-2002(Temp), f. & cert. ef. 10-3-02 thru 3-31-03; REV 8-2002, f. & cert. ef. 12-31-02; Rev 4-2003, f. & cert. ef. 12-31-03

150-315.113

Voluntary Removal of Riparian Land from Farm Production

(1) Definitions. For purposes of ORS 315.113 and this rule:

(a) "Riparian land" means land that:

(A) Is voluntarily removed from farm production to employ conservation practices;

(B) Lies between a river, stream, or other natural water course and land that is in farm production; and

(C) Does not exceed 35 feet in width.

(b) "Forgone crop" means the crop grown on the riparian land in the year prior to taking it out of production.

(c) "Yield" means the amount of crop harvested per acre in the year of the credit as is commonly reported by the County Extension Office for that crop (e.g., pounds, bushels, etc.)

(d) "Market value" means the average county price for that crop as reported for the year of the credit by the County Extension Office.

(2) The credit is determined each year based on yield and market value for the forgone crop using the formula: $A \times B \times C \times D$, where:

A = the total acreage of riparian land removed from production

B = the crop yield per acre

C = the market value of the forgone crop

D = 75 percent

Example 1: John leases farmland along the Luckiamute River and grows grass seed within 10 feet of the river. In 2004, he voluntarily decides to widen the unplanted area along the river to 35 feet. To claim the credit for not planting the 25 feet of newly created riparian land, John determines the credit based on the crop planted there in 2003 and the average 2004 yield and market value. In 2005, John continues to not plant the 25 feet of riparian land and claims the credit. The credit amount is again based on the crop last grown on the land in 2003, using 2005 yield and market value averages.

Example 2: Hillary created 4 acres of riparian land in the Willamette valley in 2004. In the prior year, she grew a crop on that land that yielded 600 pounds per acre and sold for \$0.50 per pound. In 2004, the County Extension Office reported the averages for that crop were 500 pounds per acre and \$0.40 a pound. Her credit in 2004 is \$600 ($4 \times 500 \times \$0.40 \times .75$).

(3) A credit is not allowed in a year in which a crop is not grown on the land adjacent to the riparian land. Land lying fallow under normal farming practices for the area is considered to be a crop and is not affected by this subsection.

Example 3: Sam owns 6 parcels of farm land in eastern Oregon all of which border Bully Creek. Unlike previous years, when planting begins in 2004, Sam voluntarily does not plant within 35 feet of the creek bed. Parcel 1 was planted with peppermint in 2001, but was fallow in 2002 and 2003 under normal farming practices in Malheur County. Parcels 2 through 5 are planted in sweet potatoes after growing alfalfa in 2003. Parcel 6 is very rocky and Sam has not planted on any of that parcel for the ten years he has owned it. To determine the 2004 riparian land credit for parcel 1, Sam uses the crop last grown in 2001 (peppermint). For parcels 2 through 5, he uses the crop (alfalfa) grown in 2003. Sam cannot claim the riparian land credit for parcel 6 as it was not in farm production.

Stat. Auth.: ORS 305.100 & ORS 315.113

Stat. Implemented: ORS 315.113

Hist.: REV 4-2003, f. & cert. ef. 12-31-03

150-315.262

Working Family Childcare Credit

(1) For purposes of this credit, qualifying child care expenses include:

(a) amounts excluded from income as dependent care benefits under Internal Revenue Code (IRC) Section 129;

(b) dependent care benefits provided as part of a cafeteria plan under IRC Section 125; or,

(c) reimbursement of child care expenses as part of a flexible spending arrangement.

Example 1: George is a widower with one child. He pays work-related expenses of \$1,900 for the care of his 4-year-old child and qualifies to claim the Working Family Childcare Credit. His employer pays an additional \$1,000 under a qualified dependent care benefit plan. This \$1,000 is excluded from George's income. George figures his credit on \$2,900 of work-related expenses.

Example 2: Jack is reimbursed by his employer for up to \$2,000 of medical or dependent care expenses incurred during the calendar year. Jack agreed to a reduction in salary of an equal amount. Jack cannot exclude medical or dependent care reimbursement under this plan from gross income because the same amount may be used to reimburse different types of expenses. The childcare expenses Jack actually pays

during the year qualify for the Working Family Childcare Credit.

(2) Household size is the number of individuals living in the home that are rightfully claimed as exemptions on the taxpayer's return. Dependent children are included in the household size of the custodial parent even if their exemptions were released to a noncustodial parent under IRC Section 152(e). In situations where custody is joint or shared, the child is included in the household size of the parent rightfully claiming the child on the return. For purposes of this credit, an individual cannot be counted in household size on more than one return.

Example 3: Dale and Lisa are divorced with two children. Lisa has custody of both children, but releases the dependent exemption for one child to Dale. Dale has the children on certain weekends, holidays, and one month in the summer. Lisa has remarried and her mother-in-law is a qualifying dependent having lived in the home the entire year. Both Dale and Lisa may claim the credit based on the childcare costs each paid. Lisa's household size equals five (herself, spouse, one dependent child, one dependent child whose exemption is released to the father, and mother-in-law.) Dale's household size equals one (himself). Although he claims one child on his tax return, Dale does not have primary custody. The child does not live with him and is not included in household size.

(3) Federal poverty level is the poverty level for the same tax year as calculated by the federal Department of Health and Human Services.

(4) Married Individuals Filing Separately

(a) Taxpayers filing separate returns who share a common household will not be able to claim the Working Family Childcare Credit.

(b) Taxpayers who do maintain separate residences at the end of the tax year, and who intend to live apart in the future, shall determine their household size based on the computation defined in paragraph (2) of this rule.

Example 4: John and Sue are married and have two children. They are legally separated and live apart permanently, each having one child live with them. John and Sue file separate returns for the tax year, each claiming a child as a dependent. John and Sue will each have a household size of two to determine the percentage of childcare costs each may claim as a Working Family Childcare Credit. Each of them may claim the credit based on the childcare costs each paid.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.262

Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03

150-316.054

Social Security and Railroad Retirement Benefits Eligible for Subtraction

A subtraction from federal taxable income is allowed for social security and tier I railroad retirement benefits as defined under Internal Revenue Code Section 86. Other benefits paid by the Railroad Retirement Board (tier II, windfall, vested dual, supplemental annuities, unemployment, and sickness) are also allowed as a subtraction from federal taxable income. In all cases, the subtraction is allowed only to the extent that such benefits are included in federal taxable income.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.054

Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; REV 4-2003, f. & cert. ef. 12-31-03

150-316.127-(D)

Gross Income of Nonresidents; Other Income and Sale of Property

(1) *Income from intangible personal property.*

(a) *Business situs.* Intangible personal property, including money or credits, of a nonresident has a situs for taxation in this state when used in the conduct of the taxpayer's business, trade, or profession in this state. Income from the use of such property, including dividends, interest, royalties, and other income from money or credits, constitutes a part of the income from a business, trade, or profession carried on in this state when such property is acquired or used in the course of such business, trade, or profession as a capital or current asset and is held in that capacity at the time the income arises.

(b) *Examples:*

If a nonresident pledges stocks, bonds, or other intangible personal property in Oregon as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Again, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales thereof, regardless of where the sale is consummated, is income from sources within this state, taxable to the nonresident.

(2) *Sales of property.*

(a) *Tangible property.* The gain or profit from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in this state is taxable, even though it is not connected with a business carried on in this state, and the loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition by a nonresident of real property or tangible personal property located in this state is deter-

ADMINISTRATIVE RULES

mined in the same manner, and is recognized to the same extent, as the gain or loss from a similar transaction by a resident.

(b) *Intangible property.* The gain or profit of a nonresident from the sale, exchange, or other disposition of intangible personal property, including stocks, bonds, and other securities ordinarily is not taxable and should not be included in gross income, except to the extent that such intangible personal property has acquired a business situs in this state. Likewise, losses sustained from the sale, exchange, or other disposition of such property are not deductible, except to the extent that they are losses incurred in a business carried on within this state by the nonresident taxpayer.

(c) *S corporation stock.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of S corporation stock is not attributable to a business carried on in this state and is not sourceable to Oregon. The gain or loss from the S corporation stock shall not be used in the determination of Oregon taxable income unless the stock has acquired a business situs in this state. See subsection (1) of this rule.

(d) *Partnership interests.* A nonresident's gain or loss from the sale, exchange, or disposition of a partnership interest in an Oregon partnership is attributable to a business carried on in this state by the nonresident and is sourceable to Oregon. This gain or loss is allocated as provided in ORS 314.635.

(3) *Interest income received on contract sale of property.* Interest income received by a nonresident from the sale of Oregon property is not includable in Oregon source income. The source of the income is not from the sale of the property but rather from the use of the money permitted the buyer in an installment contract.

(4) *Distribution of a trust's income accumulation to a nonresident.* See ORS 316.737 and OAR 150-316.737 for the treatment of trust income accumulation distributions.

(5) *Net operating losses.* See OAR 150-316.007 and 150-316.014 for the treatment of net operating losses.

(6) *Passive activity losses.* See OAR 150-314.300 for the treatment of passive activity losses.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.127

Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 4-2003, f. & cert. ef. 12-31-03

OL 2003 Chapter 541, Section 3 Implied Consent

(1) A "designee" as used in this rule is a person, firm, organization, or agency authorized by a taxpayer to receive the taxpayer's confidential information. Taxpayer consent for the department to disclose to a designee may be in writing, verbal, or implied. See OAR 150-314.840.

(2) Without evidence of the filing of written consent to disclose the taxpayer's information, the department may determine that a person is authorized to receive confidential information with respect to a particular tax matter by that person representing to the department that they are authorized to receive the information and revealing to the department knowledge of tax information that is:

(a) Related to the tax matter that is the subject of the inquiry or communication;

(b) Of a nature that is generally known only to the taxpayer; and

(c) Of a nature that taxpayers ordinarily do not share with others except for the purpose of empowering the person to participate in the taxpayer's tax matters. Information disclosed by the department will be limited based on the nature of information a person presents.

(3) The following examples illustrate how the department may conclude that a taxpayer has given implied consent to the department to disclose confidential information.

Example 1: A Certified Public Accountant (CPA) calls the department, states that he is authorized to receive confidential tax information and reveals knowledge of Mary's private tax information from a department billing or notice. The department concludes that Mary has given the department implied consent to disclose information to the CPA relating to that issue since she presumably gave a copy of her billing or notice to the CPA.

Example 2: A Licensed Tax Consultant (LTC) calls the department while preparing Tom and Sue's tax return to confirm estimated tax payments made during the tax year. The practitioner, after representing that Tom and Sue have authorized disclosure, is able to provide the date and amount of each scheduled payment. The department concludes that Tom and Sue have given the department implied consent to confirm the payment information provided since they presumably gave the LTC their tax information.

Example 3: A lawyer qualified to practice in Oregon calls the department wanting to set up a payment arrangement for her client, Ashley. She states that she is representing Ashley and presents knowledge of the tax debt and Ashley's personal financial situation. The department concludes that Ashley has given implied consent to discuss and negotiate a payment plan with the lawyer.

Example 4: While speaking on the telephone with a department customer service representative, Margaret asks if she may have her daughter listen and participate in the conversation on another telephone extension or a speaker phone. The department con-

cludes that Margaret has given consent to disclose her confidential information to her daughter during the telephone call.

Example 5: Carlos comes to the department's walk-in assistance center and brings a friend to help interpret his questions. The department concludes that Carlos has given implied consent to disclose his confidential tax information to his friend during that visit.

Example 6: Jerry, age 19, is stationed overseas with the U.S. Army. His mother calls the department indicating that she is authorized to receive Jerry's confidential tax information and with information from a billing notice issued to Jerry three months previously, along with a copy of Jerry's return. She offers to make full payment on the debt using her credit card, if the department will provide the payoff balance. The department concludes that Jerry has given the department implied consent to provide the balance due to his mother.

Example 7: Jim and Julie file Oregon personal income tax returns jointly, but Jim files a Lane Transit District (LTD) Self-Employment Tax return in his name only for his Schedule C business. Julie calls the department to discuss a billing notice issued on the LTD return. She tells the department that she performs all bookkeeping services for his business and has the return, notices and knowledge of all business transactions. The department concludes that Jim has given implied consent for the department to disclose information to Julie to resolve the billing notice.

Example 8: Martin, representing that he is an employee in the tax section of XYZ, Inc. authorized to discuss the business's tax matters, calls the department with information from a department billing notice requesting a payoff amount. The department concludes that XYZ, Inc. has given the department implied consent to provide Martin with the payoff amount.

Example 9: ZYX Corporation contracts with Advent Payroll Service to perform all of its payroll functions, including remittance of payroll withholding deposits and quarterly payroll reports. Advent registers with the department to remit ZYX's payments via electronic funds transfer by filing required tax information. The department concludes that ZYX has given the department implied consent to disclose payment-related confidential information to Advent in order to process payments received.

Example 10: Connie, an Elderly Rental Assistance (ERA) recipient, asks her caseworker from Senior and Disabled Services to contact the department regarding benefits she received from that agency. The caseworker indicates that Connie has authorized her to receive confidential information and demonstrates full knowledge of Connie's ERA claim. The department concludes that Connie has given implied consent for the department to discuss her claim with the caseworker.

(4) If the department is unable to sufficiently determine that a taxpayer has given express or implied consent to disclose confidential information, written consent will be required.

Example 11: Donna calls the department inquiring as to whether Avis, her mother, received tax refunds during the past two years. Donna indicates that Avis has authorized her to receive confidential information. Although Donna provides Avis' full name, address, and social security number, she does not demonstrate any knowledge of Avis' tax returns or filing history. She does not have any notices or department letters to Avis in her possession. The department concludes that Avis has not given the department implied consent to disclose her confidential tax information to Donna. To receive the information, Donna will need to provide the department with written consent to disclose from Avis.

Stat. Auth.: ORS 305.100

Stats. Implemented: OL 2003 Ch 541 Section 3

Hist.: REV 4-2003, f. & cert. ef. 12-31-03

Adm. Order No.: REV 5-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 11-1-03

Rules Amended: 150-306.115

Subject: Statement of Intent: The Department of Revenue adopts the amendments to OAR 150-306.115 for the reasons set out below. The adoption of these amendments is effective December 31, 2003.

The department is making changes to OAR 150-306.115 for three reasons. There are two substantive policy changes. The first is to remove "good and sufficient cause" as a supervisory standard. (Deletion of former 150-306.115(3)(a)(B)). This is being done because ORS 305.288 gives an aggrieved party a statutory right to appeal to the tax court in this circumstance. This change eliminates duplication of jurisdiction between the department and the court.

The second policy change is to add a provision to allow the department to reduce a value when requested by an assessor, or to approve a stipulation. (Addition of new provision 150-306.115(6)). This is intended to streamline the process for making these types of corrections.

The remaining changes to OAR 150-306.115 are to clarify and modernize the language in the rule. Much of the rule was rewritten, but no policy changes are intended other than the two described above. Except for the two substantive policy changes outlined above, the department's procedures and the handling and resolution of petitions will not change as a result of the other rule amendments.

Rules Coordinator: Xann-Marie Culver—(503) 947-2099

ADMINISTRATIVE RULES

150-306.115

Supervisory Authority

(1) ORS 306.115 is an extraordinary remedy that gives the Department of Revenue authority to order a change or correction to a separate assessment of property. An assessor or taxpayer may request a change or correction by filing a petition with the department. A petition must meet the requirements of OAR 150-306.115-(A).

(2) The department may correct any errors or omissions in the assessment or tax roll under ORS 306.115(2) through (4), including but not limited to clerical errors and errors in property value, classification, or exemption.

(3) Before the department will consider the substantive issue in a petition (for example, value of the property, qualification for exemption, etc.), the petitioner has the burden of showing that the requirements for supervisory jurisdiction, as stated in ORS 306.115 and section (4) of this rule, have been met. The department will base its determination on the record before it.

(a) The department may request supplemental information from the petitioner if it determines the petition is inadequate. The department may dismiss the petition if the petitioner does not provide the requested information within the time specified.

(b) If a determination can be made from the written information, a supervisory conference will not be held.

(c) If a determination cannot be made from the written information, a supervisory conference will be held. At a supervisory conference, the department will consider only whether the requirements of ORS 306.115 and this rule have been met. The substantive issue in the petition will not be considered.

(d) If the department determines that it has the authority under ORS 306.115(3) to consider the substantive issue in the appeal, it will hold a merits conference, if necessary, to consider the substantive issue. If the department determines that it does not have the authority to consider the substantive issue in the petition, the petition will be denied.

(4) The department will consider the substantive issue in the petition only when:

(a) The assessor or taxpayer has no remaining statutory right of appeal; and

(b) The department determines that an error on the roll is likely as indicated by at least one of the following standards:

- (A) The parties to the petition agree to facts indicating likely error; or
- (B) There is an extraordinary circumstance indicating a likely error.

Extraordinary circumstances under this provision are:

(i) The taxation of nonexistent property, property that is exempt as a matter of law without an application, or property outside the taxing jurisdiction;

(ii) Taxpayers' computational or clerical errors in reporting the value of personal property pursuant to ORS 308.290;

(iii) Instances in which a bona fide purchaser had no notice of a real property roll correction made under ORS Chapter 311 during the appeal period set forth in ORS 305.280; and

(iv) Instances in which a question of fact exists which is of interest to the department, does not fall within any other provision of ORS 306.115 and this rule and does not involve an error in valuation judgment.

(5) The department may correct the assessment or tax roll with respect to a separate assessment of property for the current tax year, for either or both of the tax years immediately preceding the current tax year, or for any combination of such years. The requirements of ORS 306.115 and this rule must be met for each year that a correction is to be made. The department may make a correction under ORS 306.115(3) only when:

(a) The requirements of subsections (4)(a) and (4)(b) of this rule have been met and the department determines that an error exists on the roll; or

(b) The requirements of section (6) of this rule have been met.

(6) Notwithstanding the requirements of section (4) of this rule, the department may correct the roll when:

- (a) The assessor requests a reduction in value; or
- (b) The taxpayer and assessor stipulate to an assessment change.

(7) The remedies provided by ORS 306.115 should not be viewed as substitutes for the ordinary appeal remedies provided by other sections or the provisions of ORS 305.288.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 306.115

Hist.: RD 4-1984(Temp), f. & cert. ef. 8-6-84; RD 7-1984, f. 12-5-84, cert. ef. 12-31-84; RD 9-1985, f. 12-26-85, cert. ef. 12-31-85; RD 10-1987(Temp), f. & cert. ef. 11-1-87; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1992, f. & cert. ef. 12-29-92; RD 10-1992, f. 12-30-92, cert. ef. 12-31-92, Renumbered from 306.115-(B); RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 1-1999(Temp), f. 3-2-99, cert. ef. 3-3-99 thru 8-3-99; REV 3-1999, f. & cert. ef. 9-1-99; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2003, f. & cert. ef. 12-31-03

Adm. Order No.: REV 6-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 11-1-03

Rules Adopted: 150-OL 2003 Ch. 454 Sec. 1(1), 150-OL 2003 Ch. 454 Sec. 1(12), 150-OL 2003 Ch. 454 Sec. 1(13), 150-OL 2003 Ch. 454 Sec. 4(1)(c), 150-OL 2003 Ch. 454 Sec. 4(3), 150-OL 2003 Ch. 621 Sec. 109(1), 150-294.175(2)-(A), 150-294.175(2)-(B), 150-294.435(1)-(C), 150-308.159, 150-309.110(1)-(D), 150-309.110(1)-(E), 150-309.115(1)-(C)

Rules Amended: 150-294.187, 150-308.156(5)-(B), 150-308.219, 150-308.250, 150-309.100(3)-(B), 150-309.100(3)-(C), 150-309.110(1)-(A), 150-309.110(1)-(B), 150-311.672(1)(a), 150-311.708, 150-311.806-(A), 150-312.040(1)(b), 150-321.005, 150-321.045, 150-321.432-(A)

Rules Repealed: 150-321.282(1)-(C), 150-321.282(1)-(D), 150-321.282(1)-(E), 150-321.282(1)-(I), 150-321.282(2)(a), 150-321.282(2)(c), 150-321.282(5), 150-321.379(1)-(A), 150-321.379(1)-(B), 150-321.379(2)-(A), 150-321.379(2)-(C), 150-321.430(1), 150-321.430(3)-(A), 150-321.430(3)-(B), 150-321.430(3)-(C), 150-321.430(3)-(D), 150-321.434, 150-321.434(1), 150-321.434(2), 150-321.515, 150-321.950

Rules Renumbered: 150-294.211(26) to 150-294.311(30), 150-309.115(2)-(f) to 150-309.115(2)-(e), 150-311.205(1)(b) to 150-311.205(1)(b)-(A), 150-311.205(1)(c)-(A) to 150-311.205(1)(b)-(B), 150-Ch. 1078 Sec. 2 & 35 1999 Session to 150-321.354, 150-Ch. 1078 Sec. 2 & 35 1999 Session to 150-321.812, 150-570.560 to 150-570.562

Rules Ren. & Amended: 150-311.205(1)(c)-(C) to 150-311.205(1)(b)-(C), 150-321.282(6)(a)-(A) to 150-321.282(4)(a)-(A), 150-321.282(6)(a)-(D) to 150-321.282(4)(a)-(B), 150-321.358(2)(b) to 150-321.358(3)(b)-(A), 150-321.358(3)(b) to 150-321.358(4)(b), 150-321.358(4) to 150-321.358(5), 150-321.815(2)(b) to 150-321.815(3)(b), 150-321.815(4) to 150-321.815(5)

Subject: These proposed changes are to adopt, amend, renumber, repeal, or amend and renumber Administrative Rules relating to Property Tax and Timber Tax, Local Budget, and County Assessment Funding Assistance.

Rules Coordinator: Xann-Marie Culver—(503) 947-2099

150-Oregon Laws 2003, Ch. 454, Section 1 (1)

Common Ownership

"Majority interest" means an interest greater than 50 percent.

Stat. Auth.: ORS 305.100

Stats. Implemented: OR Laws 2003, Chap. 454, Sect. 1(1)

Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-Oregon laws 2003, Ch. 454, Section 1 (12)

Establishing the Identity of the Taxpayer for Severance Tax

For purposes of establishing the identity of the taxpayer for the severance tax, OAR 150-321.005(9) applies.

Stat. Auth.: ORS 305.100

Stats. Implemented: OR Laws 2003, Chap. 454, Sect. 1(12)

Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-Oregon Laws 2003, Ch. 454, Section 1 (13)

Timber Subject to the Small Tract Forestland Severance Tax

(1) Timber subject to the Small Tract Forestland Severance Tax is the following:

(a) All logs that can be measured in board feet and meet the requirements of sawmill grades or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWL-RAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

ADMINISTRATIVE RULES

(2) Timber not subject to Small Tract Forestland Severance Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood, and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

Stat. Auth.: ORS 305.100
Stats. Implemented: OR Laws 2003, Chap. 454, Sect. 1(13)
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-Oregon Laws 2003, Ch. 454, Sec. 4 (1)(c) Minimal Stocking and Species Requirements for Small Tract Forestland Assessment

(1) To qualify, the land must have growing upon it at least the number of established trees per acre according to OAR 629-610-0020(4)-(8) established by the state forester. Also, for the land to qualify, the established trees must be of a marketable species acceptable to the state forester as established in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of subsection (1), the owner must present to the assessor a written plan for establishing trees to meet the minimum requirements for stocking. The plan must contain and meet the following requirements:

(a) A description of the area that shows the location, number of acres, ground cover, present stocking, steepness of slope, and direction slope faces.

(b) A list of needed site preparation requirements prior to planting. An example would be brush or grass removal, rodent eradication, disease and insect problems, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least one-fifth (20 percent), but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter a minimum of one-fifth (20 percent) of the area must be planted, in addition to the previous year's requirements. At the end of the fifth year after the assessor approves designation, 100 percent of the area in the plan must be planted. Extensions to planting requirements may be granted by the assessor if a loss of planted stock occurs due to conditions beyond the control of the landowner.

Stat. Auth.: ORS 305.100
Stats. Implemented: OR Laws 2003, Chap. 454, Sect. 4(1)(c)
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-Oregon Laws 2003, Ch. 454, Section 4 (3) Notation on Assessment and Tax Roll

The assessment and tax roll must show the notation "Small Tract Forestland — Potential Additional Tax Liability" for each parcel of land that is assessed as small tract forestland.

Stat. Auth.: ORS 305.100
Stats. Implemented: OR Laws 2003, Chap. 454, Sect. 4(3)
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-Oregon Laws 2003, Ch. 621, Section 109(1) Common Ownership

"Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government, or a governmental instrumentality.

Stat. Auth.: ORS 305.100
Stats. Implemented: OR Laws 2003, Chap. 621, Sect. 109(1)
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-294.175(2)-(A) Contents of Grant Application

(1) On or before May 1 of each year, each county must file with the Department of Revenue an application in order to participate in the grant program provided through the County Assessment Function Funding Assistance Account under ORS 294.178.

(2) The county must submit a grant application on forms provided by the department.

(3) The application must be accompanied by a resolution from the governing body of the county.

(a) The grant application resolution must be signed by the chairperson or judge of the governing body, or an appointee of the governing body that is acting under the authority of the governing body.

(b) If the chairperson or judge does not sign the resolution, the county also must submit a copy of the minutes of the meeting in which the governing body heard and approved the grant application resolution.

(c) The resolution must provide that the county agrees to appropriate the budgeted dollars in the grant application based on 100 percent of the expenditures certified by the department as provided under ORS 294.175(5).

(4) The department may reject an application that fails to meet the requirements of subsections (2) and (3).

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100 and ORS 294.175
Stats. Implemented: ORS 294.175
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-294.175(2)-(B) Estimates of Expenditures for Assessment and Taxation

(1) On or before May 1 of each year, each county must file with the Department of Revenue an estimate of expenditures for assessment and taxation as required by ORS 294.175 in order to participate in the grant program provided under ORS 294.178 for the tax year beginning on July 1.

(2) The county may file an amended estimate of expenditures no later than June 1, if it determines that it has additional resources for such purposes.

(3) The amended filing must be on a form approved by the department.

(4) The department will review the amended filing using the review standards applicable to the original filing.

Stat. Auth.: ORS 305.100 & 294.175
Stats. Implemented: ORS 294.175
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-294.187 Turnovers from the CATF to the CAFFA Account

(1) ORS 294.187 provides for the creation of a fund in each county to be known as the County Assessment and Taxation Fund (CATF). The purpose of this fund is to provide a method of funding the assessment and taxation functions within the state of Oregon.

(2) To ensure the intent of the law is accomplished, the county must notify the Department of Revenue and the State Treasury of the amount it will deposit into the County Assessment Function Funding Assistance (CAFFA) Account from the county CATF Account on or before the 10th day of the month following the last day of the fiscal quarter.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.187
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(F); REV 6-2003, f. & cert. ef. 12-31-03

150-294.311(30) Definition of Organizational Unit

An organizational unit is a public administrative subdivision accountable for specific services, functions, or activities within the spending limits and goals established by the governing body of the municipal corporation. As used in this context, organizational unit is synonymous with department, office, division, etc. The term organizational unit shall not apply to hospitals, school districts and community colleges. For most cities expenditures within the general fund will be classified by city recorder, police department, fire department etc. For most counties, expenditures within the general fund will be classified by assessor's office, treasurer's office, clerk's office, etc. For other municipalities, the governing body will identify organizational units within the general fund by the responsibilities assigned, e.g., General Administration, Plant Maintenance, etc.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.311
Hist.: 12-1-77, Renumbered from 150-294.311(19); TC 18-1979, f. 12-20-79, cert. ef. 12-31-79, REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from 150-294.311(23); Renumbered from 150-294.311(26) by REV 6-2003, f. & cert. ef. 12-31-03

150-294.435(1)-(C) Publishing of Amended Budget Document

(1) When publishing an amended budget document, the governing body must include the following information using the same publishing procedures as the original summary described under ORS 294.421:

(a) The date, time, and place of the hearing on the amended budget.
(b) The place and times the amended budget document is available for inspection.

(c) A financial summary of the total budget described in ORS 294.386, as amended by the governing body.

ADMINISTRATIVE RULES

(d) A summary of each fund being changed by more than \$5,000 or 10 percent for annual budgets and for each fund being changed by more than \$10,000 or 10 percent for biennial budgets.

(e) A reference to the date and publication that the budget as approved by the budget committee was originally published. For example: "To review other funds which are not being changed as a result of this amendment to the budget, see page 5 in the May 1, 2003, edition of the Beach Bugle."

(2) The summary required by subsection (1)(d) must meet the minimum requirements of either ORS 294.416(1) or 294.418(1) as used by the district to publish the original budget.

Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.435
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-308.156(5)-(B)

Rezoned Property — Calculating Maximum Assessed Value (MAV)

(1) For purposes of determining MAV under ORS 308.142 to 308.166:

(a) "Rezoned" means on or after July 1, 1995, the governmental body that regulates zoning:

(A) Made a change in the zone designation of the property on the zoning map;

(B) Made a change in one or more conditions or restrictions affecting the authorized uses of the property in the zone that is applicable to the property; or

(C) Made any other change in the authorized uses of the property.

(b) "Rezoned" does not include:

(A) Changes in the authorized uses of the property that were imposed before July 1, 1995, by the government that regulates zoning of the property;

(B) Satisfaction of conditions or restrictions on the authorized uses of the property that were imposed before July 1, 1995, by the government that regulates zoning of the property;

(C) Changes in the authorized uses of the property imposed by a government other than the government that regulates zoning of the property; or

(D) The issuance of a conditional use permit.

(2) *The Entire Property is Rezoned.* The assessor will calculate a new MAV for the entire property tax account for the current assessment year, if:

(a) The entire property has been rezoned, and

(b) After January 1 of the preceding assessment year and on or before January 1 of the current assessment year, the entire property is used consistently with the rezoning.

Example 1: In 1998 the zoning ordinance was modified to allow additional permitted uses to the zone and was approved by the governing body. The designation on the zoning map did not change. Last year the entire property was developed under one of the new permitted uses.

Prior Year Values: Real Market Value (RMV) = \$250,000; MAV = \$97,088; Assessed Value (AV) = \$97,088.

Current year RMV of the affected portion = \$750,000.

Current year changed property ratio (CPR) for this property type = .800.

Because the rezoned affects the entire property, multiply the current year RMV of the entire property by the CPR. This is the MAV for the entire property.

$\$750,000 \times .800 = \$600,000$ (Current year MAV for the affected portion.)

(3) *The Property is Partially Rezoned.* The assessor will calculate a new MAV for a portion of the property tax account for the current assessment year, if:

(a) The affected portion of the property has been rezoned, and

(b) After January 1 of the preceding assessment year and on or before January 1 of the current assessment year, the affected portion of the property is used consistently with the rezoning. Use the following steps to determine the MAV for the property.

Example 2: Property was partially rezoned two years ago, and the rezoned portion has now been improved.

Prior year values: RMV = \$250,000; MAV \$97,088; AV = \$97,088.

Prior year RMV of unaffected portion = \$50,000.

Current year RMV of affected portion = \$700,000.

Current year CPR for this property type = .800.

Step 1: Calculate the current year MAV as if the account had not changed.

Multiply the prior year AV by 1.03. Compare the result to the prior year MAV to determine the larger amount. This becomes the current year MAV as if the account had not changed.

Larger of: Prior year AV x 1.03 compared to prior year MAV = current year MAV of unchanged account.

Larger of: $\$97,088 \times 1.03 = \$100,000$ or $\$97,088$.

$\$100,000 =$ Current year MAV of the unchanged account

Step 2: Calculate the percentage of the unaffected portion.

Determine the prior year's RMV for the unaffected portion of the property. Divide that value by the prior year RMV for the whole account. This is the percentage of the account that is unaffected by the change to the property.

Prior year RMV (unaffected portion) divided by prior year RMV (total account) = percentage of the property that is unaffected.

$\$50,000 =$ prior year RMV for the unaffected portion.

$\$250,000 =$ prior year RMV for the total account.

$\$50,000 / \$250,000 = 20\%$ (Percentage of the account that is unaffected.)

Step 3: Calculate the current year MAV for the unaffected portion.

Multiply the current year MAV (Step 1) by the percentage of the unaffected portion (Step 2). This is the current year MAV for the unaffected portion.

$\$100,000 \times 20\% = \$20,000$ (Current year MAV for the unaffected portion.)

Step 4: Calculate the MAV for the affected portion.

Multiply the current RMV of the affected portion by the CPR. This is the MAV for the affected portion.

$\$700,000 \times .800 = \$560,000$ (Current year MAV for the affected portion.)

Step 5: Calculate the MAV for the account.

Add the MAV for the unaffected portion (step 3) and the MAV for the affected portion (step 4) to get the MAV for the account.

$\$20,000 + \$560,000 = \$580,000$ (Current MAV for the account.)

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.156

Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 6-2003, f. & cert. ef. 12-31-03

150-308.159

Calculation of Maximum Assessed Value (MAV) for Lot Line Adjustments

(1) For purposes of calculating MAV when properties are subject to a lot line adjustment, the portion of the property that is "affected" includes:

(a) All the land comprising the properties subject to the lot line adjustment.

(b) Buildings or structures when a new lot line divides the building or structure.

Note: An example of how to perform the mathematics of this rule is incorporated throughout the rule based upon the following information:

The zoning for both tax lot 100 and tax lot 200 is RR-5 (Rural Residential 5-acre minimum) requiring a minimum of five acres before a dwelling may be built.

Before the lot line adjustment, tax lot 100 was a vacant 4-acre lot that was unbuildable due to its size. Undersized lots sell for \$7,000 per acre, making the real market value (RMV) of this unbuildable tax lot \$28,000. The associated MAV for this tax lot was \$22,400. Tax lot 200 is a vacant 8-acre lot that is buildable under the current zoning. Buildable lots sell for \$15,000 per acre, making the RMV of this tax lot \$120,000. The associated MAV for this tax lot is \$96,000.

After the lot line adjustment both lots are 6 acres in size and are buildable under the current zoning. Because buildable lots sell for \$15,000 per acre, it makes the RMV of each tax lot \$90,000.

The changed property ratio (CPR) to be used in this example is .800.

(2) Calculate the total MAV of the affected portion before the lot line adjustment as follows:

(a) For each account subject to the lot line adjustment:

(A) Divide the affected portion's RMV by the total RMV of the account.

Tax Lot (TL) 100: $\$28,000/\$28,000 = 1.00$

TL 200: $\$120,000/\$120,000 = 1.00$.

(B) Multiply the result of (A) by the property's total MAV to determine the MAV attributable to the affected portion.

TL 100: $1.00 \times \$22,400 = \$22,400$.

TL 200: $1.00 \times \$96,000 = \$96,000$.

(b) Add the MAV attributable to the affected portion for each account to determine the total MAV of the affected portion before the lot line adjustment.

$\$22,400 + \$96,000 = \$118,400$.

(3) Calculate the total MAV for the affected portion after the lot line adjustment as follows:

(a) For each account subject to the lot line adjustment, multiply the new RMV of the affected portion by the appropriate CPR to determine the MAV for the affected portion as follows.

TL 100: $\$90,000 \times .800 = \$72,000$.

TL 200: $\$90,000 \times .800 = \$72,000$.

(b) Add the MAV for the affected portion of each account to determine the total MAV of the affected portion after the lot line adjustment.

$\$72,000 + \$72,000 = \$144,000$.

(4) Compare the total MAV of the affected portion before the lot line adjustment to the total MAV of the affected portion after the lot line adjustment as follows:

Before = \$118,400. After = \$144,000.

(a) If the total MAV of the affected portion after the lot line adjustment is equal to or less than the total MAV of the affected portion before the lot line adjustment: Add the MAV for the affected portion of each account to any unaffected MAV for that account to determine the total MAV for each account.

The example does not fit this description. Continue to paragraph (b).

(b) If the total MAV of the affected portion after the lot line adjustment is greater than the total MAV of the affected portion before the lot line adjustment, the MAV for the affected portion of each account must be proportionally reduced.

The example fits this description. Proceed to paragraph (A).

(A) Divide the total MAV of the affected portion before the lot line adjustment by the total MAV of the affected portion after the lot line adjustment to determine the proportionate reduction.

$\$118,400/\$144,000 = .822222$.

(B) Multiply the proportionate reduction by the MAV of the affected portion after the lot line adjustment for each account.

TL 100: $.822222 \times \$72,000 = \$59,200$.

ADMINISTRATIVE RULES

TL 200: .822222 x \$72,000 = \$59,200.

(C) Add the MAV of the affected portion after the proportionate reduction in (B) to any unaffected MAV for that account to determine the total MAV for each account.

TL 100: \$59,200 + \$0 = \$59,200.

TL 200: \$59,200 + \$0 = \$59,200.

Stat. Auth.: ORS 305.100, 308.156

Stats. Implemented: ORS 308.159

Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-308.219

Printout Required When Assessment and Tax Rolls do not Constitute a Written Record

All information specified in the laws and administrative rules relating to the assessment roll, the tax roll and the June 30 Tax Collector's Report must be on the printouts or microfiche. The information required on these printouts or microfiche is specified below.

(1) The tax roll must reflect the assessments as of September 25 and show all corrections, changes, and additions made to the data in the computer occurring between September 25 and the date the roll is delivered to the tax collector. In addition to the information specified under ORS 308.215 for the assessment roll, printouts or microfiche must contain the following information.

(a) Tax year

(b) County

(c) Mailing address for the tax statement

(d) Building class

(e) Manufactured structure "X" plate number or HUD identification number

(f) All current year taxes extended

(g) All delinquent taxes as specified in ORS 311.125

(2) The June 30 Tax Collector's Report must be prepared by July 15 and include all changes, corrections, and additions made to the roll since the preceding June 30 Tax Collector's Report. The report must include all unpaid accounts. This includes all changes from the roll and all effects on tax monies on each account.

(3) The printouts referred to in ORS 308.219 are specifically the assessment roll, tax roll, and the June 30 Tax Collector's Report. Any other listings used are supplemental documents and not part of the required rolls, microfiche or report printouts.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.219

Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-2003, f. & cert. ef. 12-31-03

150-308.250

Cancellation of Personal Property Assessments

(1) The assessor must cancel the personal property assessment for any taxpayer whose taxable personal property in the county has a total assessed value (AV) below the threshold value computed annually under ORS 308.250(4).

(2) The department will notify the assessor of the threshold value no later than March 1 of the tax year for which the threshold value applies.

(3) After the first year of cancellation, the taxpayer must complete and file Form 150-553-004, Confidential Personal Property Return, annually with the assessor by the personal property return due date under ORS 308.290. The taxpayer must check the box that indicates the assessor cancelled the AV the previous year and must include the following:

(a) Taxpayer's name, address, and phone number;

(b) If applicable, the business name, address, and type of business;

(c) Location of property, if different from (a) and (b) above; and

(d) Assessor's account number.

(4) The department will provide to the assessor the Confidential Personal Property Return on which the taxpayer may make the claim in subsection (3).

(5) If the taxpayer fails to file the form required in section (3) of this rule, the assessor will determine the AV of taxable personal property based on available information. Such information may be obtained from a phone call to the taxpayer or a review of taxpayer's property or records. If the assessor finds that the total AV of the taxpayer's property within the county is equal to or greater than the threshold value, the assessor must place the computed value on the next assessment and tax roll.

(6) The assessor may review the taxpayer's taxable personal property or business records to verify that the value of the taxable personal property is less than the threshold value. If the assessor finds that the value of the taxable personal property is equal to or greater than the threshold value, the assessor must add the value of all taxable personal property to the assessment and tax roll.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.250

Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03

150-309.100(3)-(B)

Board of Property Tax Appeals (BOPTA) Deficient Petition Process

For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(1) The clerk of BOPTA will review the filed petitions for compliance with OAR 150-309.100(3)-(A).

(2) If the petition is deficient, the clerk will notify the petitioner by mail:

(a) Of the nature of the deficiency,

(b) Of the time allowed by paragraph (4) of this rule to correct the deficiency, and

(c) That the failure to correct the deficiency within the time allowed will result in dismissal of the appeal without further notice.

(3) The board clerk will mail the notice of deficiency to the mailing address on the petition.

(4) The petitioner has 20 days from the mailing date of the notice of deficiency or until the last day for filing a petition with BOPTA, whichever is later, to correct the deficiency. This date will be called the "amended filing date." Time is computed from the first day following the mailing date of the written notice and includes the last day unless the last day falls on a legal holiday, Saturday, or Sunday. The time is then extended to the next working day. Corrected petitions may be faxed to the county clerk and will be considered timely filed under the guidelines listed in Section (4) of OAR 150-309.100(2)-(A).

(5) In addition to amending a petition to comply with OAR 150-309.100(3)-(A) under (4) above, a petition may be amended up to and including the time of the hearing for the following reasons:

(a) To add or delete land or improvements that are components of the account originally appealed.

(b) To add a separate account that together with the original account appealed, creates a "parcel" within the meaning of OAR 150-308A.256(1)(a). The petitioner may not amend a petition to include a separate account that is not part of an identified parcel.

(c) To add a manufactured structure account that is sited on the original account under appeal.

(d) To change the value requested.

(6) If the board clerk does not identify a petition as defective until less than 20 days remain of the board session:

(a) The board clerk must notify the petitioner of the defective petition and the time available to correct the petition by telephone, fax, or letter, whichever the clerk determines would be most effective.

(b) The petitioner has until 3:00 p.m. of the last working day of the session to correct the petition. However, if the petitioner appears at the hearing, all corrections must be made at that time.

(c) The board must dismiss the petition under ORS 309.100(5) as defective under ORS 309.100(3) if the petitioner does not appear at the hearing and has not corrected the petition by 3:00 p.m. of the last working day of the session or if there is insufficient time to allow notice to be given to the petitioner.

(8) If, after the board has adjourned, the clerk discovers petitions that the board did not act upon, the clerk must notify the petitioners within 10 days. The notice must indicate the petitioner's right to appeal to the Magistrate Division of Tax Court.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97;

Renumbered from 150-309.100(1)-(A); REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03

150-309.100(3)-(C)

Those Authorized to Sign Petitions to the Board of Property Tax Appeals (BOPTA)

For purposes of appeals filed with BOPTA, "petitioner" means a person or persons listed under (1)(a) or (1)(b) of this rule.

(1) The following persons may sign a petition and present an appeal to BOPTA:

(a) The owner of the property or, if more than one owner, any of the owners. If the owner of the property is a business or other legal entity, the entity may designate one or more individuals to act as its agent(s). For example:

(A) For a corporation: officers such as president, vice-president, secretary, treasurer, CEO, or managing officer.

(B) For a limited liability company (LLC): any member may sign the petition if the LLC is member-managed. The manager qualifies to sign the petition if the LLC is manager-managed.

ADMINISTRATIVE RULES

(C) For a church: pastor, rector, deacon, president of the board, senior board member.

(D) For an association: president or managing officer.

(E) For a partnership: a general partner.

(F) For a sole proprietorship: the owner.

(G) For a trust: trustee managing member, managing agent.

(H) An employee regularly employed in the tax matters of a corporation or other business entity.

(b) Any person who holds an interest in the property that obligates the person to pay the taxes imposed on the property. An interest that obligates the person to pay the taxes includes a contract, lease, or other intervening instrumentality. Proof of the obligation must accompany the petition to the board. Other intervening instrumentality does not include mortgage agreements in which the mortgagee (the company that holds the mortgage) agrees to pay the taxes.

(c) An attorney at law who is acting on behalf of the person(s) in (1)(a) or (1)(b). The Oregon State Bar number assigned to the attorney is considered sufficient to verify the petition.

(2) The following persons may sign a petition and present an appeal to a BOPTA if they have written authorization from the petitioner or proper court appointment:

(a) Any relative of an owner of the property. For purposes of this rule, the term "relative" means any of the following:

(A) A spouse;

(B) A son, grandson, daughter, granddaughter, stepson or stepdaughter;

(C) A brother, brother-in-law, sister, sister-in-law, stepbrother, or step-sister;

(D) A father, mother, stepfather, stepmother, or grandparent;

(E) A son or daughter of a brother or sister;

(F) A son-in-law, daughter-in-law, father-in-law or mother-in-law.

(b) A person duly qualified to practice as a certified public accountant or public accountant in the State of Oregon. The person signing the petition must include their individual Oregon certificate or license number on the petition.

(c) A legal guardian or conservator who is acting on behalf of an owner of the property.

(d) A real estate broker or principal real estate broker licensed under ORS 696.022.

(e) A state certified appraiser or state-licensed appraiser licensed under ORS 674.310 or an appraiser registered under ORS 308.010.

(f) The lessee of the property.

(g) An attorney-in-fact who holds a general power of attorney signed by an owner of the property. The person filing the petition must provide a copy of the general power of attorney with the petition.

(3) If the petition is not signed and verified by a person authorized under subsection (1)(a), (1)(b), or (1)(c) the petition must include a power of attorney, court appointment, or a signed authorization that specifically grants to such person the authority to represent the petitioner. If the person signing the petition is one of those described in (2)(a),(b),(d),(e) or (f), the person may be authorized by a limited power of attorney. If the person signing the petition is one of those described in (2)(c) or (g), the person must be authorized by a general power of attorney or proper court appointment.

(4) Any petition that is received, signed by a person not authorized under ORS 309.100 or this rule will be dismissed by formal order of the board as provided in ORS 309.100(5).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-309.100(2)(c); RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-309.100(2)-(C); REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03

150-309.110(1)-(A)

Mailing of Board Orders

(1) All copies of orders that are mailed to petitioners must be mailed within five days of the date issued and no later than five days after the board has adjourned. Orders should be delivered to the officer in charge of the roll and the assessor on the same day they are mailed to the petitioner or the petitioner's designated representative.

(2) Within five days of the date an order is mailed or delivered, the clerk of the Board of Property Tax Appeals must mail or fax a copy of any order affecting property appraised by the Department of Revenue to the department's Valuation Section.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03

150-309.110(1)-(B)

Department Review of Board Orders

(1) When the clerk of the board, assessor, or tax collector finds a clerical error in an order or believes the board lacked jurisdiction to take an action, and the time period during which the board can correct the order has passed, the clerk, assessor, or tax collector may file a request with the Department of Revenue to review the order.

(a) The request must be in writing and include a copy of the hearing record and the board order.

(b) The department must mail a copy of the request to the petitioner or the petitioner's designated representative at the address shown on the board's order.

(c) "Clerical error" is defined as an error in which the board order does not accurately reflect the actions of the board as noted in the board record.

(2) If the department determines the order contains an error, the department will issue an order amending the board's order and direct the assessor to correct the roll.

(a) The department must issue an order within 45 days of the date the request was received.

(b) The department must mail a copy of the department's decision to the petitioner or the petitioner's designated representative, the clerk of the board of property tax appeals, the assessor, and the tax collector.

(c) The department may correct board orders issued during the current tax year or the two tax years immediately preceding the current tax year.

(3) Decisions of the department may be appealed to the Magistrate Division of the Oregon Tax Court within 90 days of the date the decision is mailed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1996(Temp), f. 6-7-96, cert. ef. 7-1-96 thru 12-26-96; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; Repealed by RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 6-2003, f. & cert. ef. 12-31-03

150-309.110(1)-(D)

Disposition of Appeals of Property Assessed as an Undivided Interest

(1) Any owner of property assessed as an undivided interest may petition the board of property tax appeals for a reduction in the value of the property under ORS 309.100. An appeal filed by an owner of property assessed as an undivided interest will be treated as an appeal on behalf of all the owners of all the undivided interests in the property. The owner filing the appeal will be considered the primary petitioner.

(2) When the board receives a petition of the value of property assessed as an undivided interest, the board must:

(a) Determine the real market value of the whole property as if it were under single ownership.

NOTE: The assessor may issue separate tax statements for each undivided interest in real property (ORS 308.125), but the value attributed to each interest is not an issue that can be brought before the board.

(b) If the real market value determined under (a) is reduced, apportion the value by the proportional share of each undivided interest. Apportion a maximum assessed value and assessed value for each interest.

(c) Issue an order in the name of the primary petitioner that addresses both the value of the whole property and the value attributed to each interest. Mail a copy of the order to all other persons owning a percentage interest in the property.

(3) Refunds resulting from appeals of the value of property assessed as an undivided interest will be distributed according to the procedure outlined in Section (4) of OAR 150-311.806-(A).

(4) Notwithstanding (1) above, if the property is subject to a time-share plan, an appeal of the value of the property must be filed by the managing entity as agent for the owners of the property as specified in ORS 94.808(3).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.110

Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-309.110(1)-(E)

Board of Property Tax Appeals (BOPTA) Procedures When Assessment Roll Changed Under ORS 308.242(2)

If the assessor reduces the value of property under ORS 308.242(2) after the roll is certified, but prior to January 1 of the tax year, the following procedures apply if a petition has been filed with BOPTA and no stipulation has been filed with the board prior to the date the board convenes.

(1) When the petition is requesting a value higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

ADMINISTRATIVE RULES

(2) When the petition is requesting a value lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-309.115(1)-(C)

Adjudicated Value Applied to Component Appealed

When the Board of Property Tax Appeals, the Department of Revenue, or the tax court issues a final order correcting the real market value of property that includes both land and improvements, and the final order corrects only the land component or only the improvement component, ORS 309.115 only applies to the component corrected as a result of the appeal.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-309.115(2)(e)

Additions, Remodeling and Rehabilitation

For purposes of ORS 309.115(2)(e), "additions, remodeling and rehabilitation" does not include maintenance. Maintenance includes, but is not limited to, painting and replacement of defective components with components of like utility.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.115(2)(f) by REV 6-2003, f. & cert. ef. 12-31-03

150-311.205(1)(b)-(A)

An Error in Valuation Judgment Is Not Correctable Under 311.205

(1) The officer may not correct an error or omission on the roll of value of land, improvement, personal or other property, or of any part, parcel or portion of land, improvement, personal or other property, if the correction requires that the officer exercise judgment to determine the value, formulate an opinion as to value, or inquire into the state of mind of the appraiser. Mistakes of this nature may be:

- (a) Thinking that a house has a basement when it does not; or
- (b) Making a mathematical error when computing the square footage, the acreage, or some other factor; or

(c) Errors made in calculating a real market value. For example, in appraising bare land the appraiser may simply multiply the number of acres by the per acre value for that class of land. The appraiser may also then make adjustments to that result for size, shape, configuration, or other factors which affect the value of bare land. If the appraiser makes a mistake in any of these computations or assumptions of fact, these are mistakes which have entered into the appraiser's determination of judgment and are not subject to correction.

Example 1: Taxpayer owned some 33.07 acres of land. The assessor mistakenly carried the property on the roll as 37.63 acres. The assessor arrived at a value per acre for each classification and then multiplied the per acre value times the number of acres in the tract. Although the assessor used unit values in arriving at a total assessment, the assessor may also have made some adjustments in the final figure for special features or qualities peculiar to the property. The figures may be wrong but the assessor's judgment of the parcel's value may be right.

Because it is the total assessment which is subject to question, and because more elements than simply the matter of acreage can be used to arrive at a total assessment, this is a case of value judgment and is not correctable.

Example 2: A taxpayer sold two acres of his 8.33 acre parcel. Upon notice of that sale, the assessor's office started the administrative process of setting up a new account and revising the value of the old account. The new account cards for the two-acre parcel were set up and the value put on the roll. However, in the administrative process no change in the acreage and value was made on the old appraisal envelopes and cards for the remaining 6.33 acres. Consequently, the remaining 6.33 acres were placed upon the roll at the same values used prior to the sale.

There are two errors to consider here. One is the fact that the assessor placed the original 8.33 acreage on the roll at the same value used prior to the sale. This is an error in valuation judgment, not a clerical error. Although this may appear to be a mathematical error due to the failure of one of the clerks, it could just as well be the assessor mistaken in fact and judgment. The situation is similar to that of an assessor mistaken as to the number of acres or the number of square feet in a given property. The figures may be wrong but the assessor's judgment of the parcels value may be right. (Informal Attorney General Opinion dated 2/5/69.)

Simply "subtracting" the prorated value of the two-acre parcel from the value of the 8.33 acre parcel does not necessarily result in the real market value for the 6.33 acre parcel. The appraiser must also look to the highest and best use, lay of the land, and other considerations that would affect value.

In these circumstances, the statutory scheme requires that the taxpayer be sufficiently cognizant of his property values to object and appeal if necessary. Since both the appraisal cards and the assessment roll were not changed, it must be presumed that the assessor intended those values to be used, subject to appeal.

The second error is the failure of the assessor to reduce the acreage on the original parcel from 8.33 to 6.33 acres. This is a clerical error because the correct facts are evident from the assessor records and there is no speculation or conjecture as to value.

Example 3: A parcel of land has been carried on the roll for several years as five acres. The parcel sells and the buyer requires a survey. The surveyor arrives at a measurement of 4.72 acres.

This is an error in valuation judgment and is not correctable under ORS 311.205(1)(a) as a clerical error or under ORS 311.205(1)(c) as an error or omission on the roll of any kind.

Because it is the total assessment which is subject to question, and because more elements than simply the matter of acreage can be used to arrive at a total assessment, this is a case of value judgment and is not correctable.

The assessor may correct the acreage on the next assessment and tax roll and reappraise the parcel for value, if necessary.

(2) If it is unclear whether an error or an omission on the roll is a clerical error or an error in valuation judgment, the error or omission on the roll shall be considered an error or omission in valuation judgment. For example, an error in acreage or square footage in the appraiser field notes or a failure to value or list a component upon physical reappraisal may not be corrected because the error may not necessarily have resulted in an error of real market value as finally determined and carried to the assessment and tax roll.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; Renumbered from 150-311.205(1)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-311.205(1)(b)-(C)

What is an "Error or Omission on the Roll of Any Kind"

(1) The officer may correct an error or omission on the roll of any kind if the correction does not require the exercise of valuation judgment. "Valuation judgment" includes but is not limited to selection of appraisal methodology or the estimation of functional and economic obsolescence adjustments. Errors or omissions that may be corrected under this subsection include, but are not limited to:

(a) The elimination of an assessment to one taxpayer of property belonging to another on the assessment date.

Example 1: If a deed of a sale is never recorded, the assessor records would not reflect the new ownership. Because the records do not reflect the correct information, it is not correctable as a clerical error but is correctable as an error or omission on the roll of any kind.

(b) The assessment of property more than once for the same year or assessment of nonexistent property.

(c) The placement of property on the assessment and tax roll of the wrong county or assessment on behalf of the wrong jurisdiction.

Example 2: A utility company reported certain wire and pipe mileage as being in one code area when it was in fact located in another area.

(d) The elimination or partial elimination of an assessment of property that is entitled to exemption from taxation or special assessment or entitled to partial exemption from taxation.

(e) The elimination or partial elimination of an assessment of personal property resulting from an error made by the taxpayer on a personal property return if the personal property is entitled to exemption or is otherwise not taxable.

(f) The correction of a value changed on appeal.

(g) The application of an incorrect trending or indexing factor.

Example 3: The trending factor developed for the property class in the area is 115. Through a transposition, a factor of 151 is incorrectly applied. This is a correctable error.

(h) The use of the wrong property classification.

Example 4: The property is an improved single family residential property that is classified 1-0-1. The property was incorrectly classed as a 2-0-1 and therefore received the wrong trend factor. Both the property classification and the trend factor may be corrected.

Example 5: The assessor has assessed farm property at market value on the belief that the zoning was not Exclusive Farm Use. Later the assessor discovers the land was in an Exclusive Farm Use Zone and should have been assessed at its farm use value. Because the records of the assessor failed to reflect the proper status of the property, this is not correctable as a clerical error. Because a correction can be made without the use of appraisal judgment, this is not a case of valuation judgment under ORS 311.205(1)(b) and is correctable as an error or omission on the roll of another kind.

(i) The correction of an error or omission in the computation or application of the tax rate.

Example 6: A tax rate error is correctable. A water district shares boundaries with a city. The city annexes property from the water district. The boundary change information was not filed timely with the assessor and the Department of Revenue and should not have been considered in the calculation of the taxes. The county should make the correction to the tax calculation and refund or assess the properties in the districts as appropriate so they have been assessed the correct amount of tax

(j) The correction of an error or omission on the roll that arises from inaccurate reporting of assets, or of facts about assets by a taxpayer on a return filed under ORS 308.290.

Example 7: A taxpayer reports a machinery asset on both its real and personal property accounts. The cost is double-reported for valuation purposes.

Example 8: A taxpayer reports assets transferred to the site at their net book value rather than original cost. The cost is inaccurately reported for valuation purposes. This error or omission may be corrected only if the incorrect calculation of value was a result of a simple mathematical extension and does not require a new valuation judgment.

(A) The error or omission may be corrected if the taxpayer subsequently provides accurate asset information, and if no additional or different valuation judgment is required to make the correction.

ADMINISTRATIVE RULES

(B) When a correction of inaccurate reporting of assets or of facts about assets by a taxpayer results in a reduction of tax and a refund under ORS 311.806, no interest is paid under ORS 311.812.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.205

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150.311.205(1)(c)-(B) by REV 6-2003, f. & cert. ef. 12-31-03

150-311.672(1)(a)

Data Requirements for Property Description on Tax Deferral Application

The county assessor's office must complete the deferral application property description. The Department of Revenue will provide the application format. The property description must include the following information:

- (1) The recording number;
- (2) Year recorded;
- (3) Book and page number;
- (4) Assessor's account number;
- (5) Code area; and
- (6) Property description:

(a) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(b) For a property that is unplatted (metes and bounds), a description that includes township, range, section, acres, and a copy of the recorded deed or contract must be forwarded with the application;

(c) For a manufactured structure, the model year, make, motor vehicle division identification number, and serial number.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.672

Hist.: f. 10-14-92, ef. 12-31-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03

150-311.708

Data Requirements for Property Description on Special Assessments Application

The bonding district's officer must complete the application property description. The Department of Revenue will provide the application format. The property description must include the following information:

- (1) The recording number;
- (2) Year recorded;
- (3) Book and page number;
- (4) Assessor's account number;
- (5) Code area; and
- (6) Property description:

(a) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(b) For a property that is unplatted (metes and bounds), a description that includes township, range, section, acres, and a copy of the recorded deed or contract must be forwarded with the application;

(c) For a manufactured structure, model year, make, Motor Vehicle Division identification number, and serial number.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.708

Hist.: 10-14-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03

150-311.806-(A)

Process for Determining Recipient of Property Tax Refund

- (1) Recipients of refunds will be determined as follows:

(a) Whenever a refund is the result of an appeal, the refund for the year(s) included in the petition must be made to the petitioner as shown on the petition, unless the petitioner instructs the tax collector, in writing, to make the refund to someone else. If the appeal results in a lowering of value under ORS 309.115 for subsequent year(s) that were not included in the petition and a refund results, the refund for the subsequent year(s) must be made to the current owner of record on the tax roll at the time of the refund.

(b) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made to the owner of record on the tax roll at the time of the refund.

(c) Whenever, through excusable neglect, or through an error subject to correction under ORS 311.205, taxes are paid on property in excess of the amount actually due, the refund must be made to the owner of record on the tax roll at the time of the refund.

(d) Whenever the taxes are paid on the property of another by mistake of any kind, the refund must be made to the payer of the tax.

(2) As used in this rule, "owner of record on the tax roll" means the owner or an owner of the property or the person(s) in whose name(s) the property is assessed on the tax roll.

(3) As used in this rule, "at the time of the refund" means the time at which the tax collector calculates the refund and any applicable interest.

(4) Pursuant to OAR 150-309.110(1)-(D), a refund resulting from a petition to BOPTA, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided interest, will be apportioned to all of the owners of the property according to the percentage of interest owned.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.806

Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806-(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03

150-312.040(1)(b)

Mailing of Notice of Foreclosure Proceeding

Counties have the option to send the first-class mail notice prior to sending the certified mail notice, providing both notices are sent by August 15, or the date of application of judgment and decree, whichever is later.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 312.040

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 6-2003, f. & cert. ef. 12-31-03

150-321.005

Timber Subject to the Forest Products Harvest Tax: Measurement Standards

(1) Timber subject to the Forest Products Harvest Tax is the following:

(a) All logs which can be measured in board feet and meet the requirements of utility cull or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWL-RAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

(2) Timber not subject to Forest Products Harvest Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood, and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.005

Hist.: 10-7-85, 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-2003, f. & cert. ef. 12-31-03

150-321.045

Estimated Tax Payments for FPHT

(1) Any taxpayer required to report and pay estimated tax as determined by ORS 321.045(4) must file a return and pay a tax of at least 25 percent of the estimated liability for the calendar year for which the report is made.

(2) The provisions of ORS 321.045(5) are not elections or alternate methods of determining the amount of estimated tax liability, but rather standards against which estimated payments are tested for adequacy with respect to application of penalty in the form of interest.

(3) A taxpayer not required to file a return or to pay a tax for the prior calendar year is not relieved of the responsibility to pay an estimated tax. Such taxpayers must make payment equal to 100 percent of the actual liability on the timber harvested during the calendar quarter for which the report is made or at least 20 percent of the liability due for the calendar year for which the report is made.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 312.045

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 6-2003, f. & cert. ef. 12-31-03

150-321.282(4)(a)-(A)

Determination of Eligibility for Election

(1) An owner may qualify for the small owner election on the basis of acreage if total ownership is less than 5,000 acres of forestland in western Oregon.

(a) Total ownership and partial ownership interests must be included in calculating the total acres owned.

ADMINISTRATIVE RULES

(b) The ownership need not be contiguous but may be scattered throughout western Oregon.

(c) The quantity of acreage is the greatest acreage owned at any one time during the calendar year for which the election is to be made.

(2) An owner who uses 25 MBF or less of timber during a calendar year in a portable processing plant that is temporarily located on land from which the timber is harvested does not own more than 10 percent of a processing business for purposes of ORS 321.282(4).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.282

Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96, Renumbered from 150-321.282(4)(a)-(A); Renumbered from 150-321.282(6)(a)-(A) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.282(4)(a)-(B)

Information to be Furnished the Department by the Owner

In making an election and filing returns, the following must be included in the return:

(1) The description of the area from which the timber was harvested.

(2) A list of the money received as the sale price of products, by purchaser.

(3) A statement affirming that the owner owned less than 5,000 acres of forestland in western Oregon during the calendar year for which the election is being made.

(4) A copy of the logging agreement from which costs are taken to calculate the net stumpage recovery.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.282

Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96, Renumbered from 150-321.282(4)(a)-(D); Renumbered from 150-321.282(6)(a)-(D) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.354

Common Ownership; Definitions:

(1) "Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government or a governmental instrumentality.

(2) "Majority interest" means an interest of greater than 50 percent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.354

Hist.: Renumbered from 150-Ch. 1078 Sec. 2 & 35 1999 Session by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(3)(b)-(A)

Date of Acquisition

In answering the question on the application for designation as forestland concerning date of acquisition, the applicant must list the exact date of acquisition if the forestland was acquired within the five year period immediately preceding the date of the application. If the forestland was acquired more than five years before the date of the application, that fact must be stated, but dates are not required.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.358

Hist.: 2-68; 3-70; 3-16-78, Renumbered from 150-321.358(2)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(4)(b)

Acceptable Uses of Western Oregon Forestland

Certain lands do not support sufficient minimum stocking of trees to qualify for designation as forestland. However, when the use of these lands supports desirable forestry management practices on surrounding lands to promote the state policy of encouraging forestry, they may be designated as forestland.

(1) Rock Pits. Forest roads, except principal exterior access roads, are recognized as forestland under ORS 308.236. Fills, ballast, bridges, culverts, drains, and surfacing are included in the definition of forest roads. Since rock is necessary to maintain or improve the usefulness of these roads, rock pits and adjacent rock storage areas are an acceptable use and are eligible for designation as forestland under the following conditions:

(a) The rock pit comprises less than 5 percent of the total forestland of the owner in the area served by the pit.

(b) The rock from the pit is used on land defined as forestland under ORS 321.257(2).

(c) The rock produced from the pit is not commercially sold, but is used on forestland of the owner of the pit, or traded to other forestland owners in the area for in-kind products to be used at economically distant locations.

(d) The forestland owner maintains appropriate records to be available at the request of the Assessor to substantiate forest management use of rock pits and other similar items.

(2) Easements. Some lands are encumbered by easements for road or transmission line rights-of-way which prohibit establishment of commercial forests. Such lands may be valued and assessed as forestland when:

(a) Application for designation as forestland has been made.

(b) The lands are adjacent to, and an integral part of, the forest property of the owner.

(c) The lands would otherwise qualify for designation as forestland, if sufficient stocking of trees was permitted.

(d) Not more than 20 percent of the forestland of the owner is encumbered by easements.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.358

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; Renumbered from 150-321.358(3)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(5)

Notification by Assessor of Denial of Application

The assessor will send the written notice denying the application, in whole or in part, for designation of forestland to the applicant by certified mail.

Stat. Auth.: ORS 305.100

Stat. Implemented: ORS 321.358

Hist.: 2-68; 3-70; 3-16-78, Renumbered from 150-321.358(4) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.432-(A)

Requirements for Small Harvester Election and Tax Return Filing

To qualify for the small harvester election, an owner must meet all the following requirements:

(1) Own less than 5,000 acres of forestland in eastern Oregon.

(2) Own 10 percent or less in a business engaged in the processing of timber into wood products.

(3) File and sign a Small Harvester Tax Return, supplied by the department, affirming that all information is true, correct, and complete.

(4) Report volume determined by using the Scribner Decimal C, Short Log Rule, using U.S. Forest Service East-Side Scaling Methods.

(5) Attach a written contract logging agreement to the tax return when that option is used for the logging cost estimate.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.432

Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; REV 6-2003, f. & cert. ef. 12-31-03

150-321.812

Common Ownership; Definitions:

(1) "Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government or a governmental instrumentality.

(2) "Majority interest" means an interest of greater than 50 percent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.812

Hist.: Renumbered from 150-Ch. 1078 Sec. 2 & 35 1999 Session by REV 6-2003, f. & cert. ef. 12-31-03

150-321.815(3)(b)

Date of Acquisition

In answering the question on the application for designation as forestland concerning date of acquisition, the applicant must list the exact date of acquisition if the forestland was acquired within the five year period immediately preceding the date of the application. If the forestland was acquired more than five years before the date of the application, that fact must be stated, but dates are not required.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.815

Hist.: 11-71; Renumbered from 150-321.815(2)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.815(5)

Notification by Assessor of Denial of Application

The assessor will send the written notice denying the application, in whole or in part, for designation of forestland to the applicant by certified mail.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.815

Hist.: 11-71; Renumbered from 150-321.815(4) by REV 6-2003, f. & cert. ef. 12-31-03

150-570.562

Weed Control Assessments

Special assessments for weed control activities under Section 5a, chapter 621, Oregon Laws 1985, shall be extended on the county tax roll.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 570.560

Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; Renumbered from 150-570.560 by REV 6-2003, f. & cert. ef. 12-31-03

ADMINISTRATIVE RULES

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

Adm. Order No.: DMV 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Repealed: 735-061-0010, 735-061-0020, 735-061-0030, 735-061-0040, 735-061-0050, 735-061-0060, 735-061-0070, 735-061-0080, 735-061-0090, 735-061-0100, 735-061-0110, 735-061-0120, 735-061-0130, 735-061-0140, 735-061-0150, 735-061-0160, 735-061-0170, 735-061-0180, 735-061-0190, 735-061-0200

Subject: The rules in OAR Chapter 735, Division 61 established a pilot program in which DMV entered into agreements with private contractors and certified them to perform Class C knowledge, safe driving practices and driving skills testing on behalf of the department under the authority of ORS 802.600. This pilot program began in January of 2000 and ended on November 3, 2003. DMV is now repealing the rules that established the pilot program because this pilot program has ended.

Rules Coordinator: Brenda Trump—(503) 945-5278

.....

Adm. Order No.: DMV 2-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Amended: 735-116-0000

Subject: The amendment to this rule is necessitated by legislation passed during the 1999 and 2001 Legislative Assemblies. In 1999, ORS 821.020 was amended changing the location in the state where the rule applies. In 2001 one equipment change was made in the statute for vehicles operating on sand. Neither of these changes was timely reflected by amendment of OAR 735-116-0000. Confusion to the public and law enforcement over equipment requirements will be avoided with the rule amendment and increase flag use and operational safety by such flag use. These amendments were adopted by temporary rule effective July 17, 2003 and are now being made as permanent amendments. Additional changes were made to clarify the types of vehicles that are included as "off-road vehicles," minor editorial changes and to specify the requirement for headlights and taillights. Lights are required by ORS 821.040, however, the requirements are being added to the rule for the convenience of the reader.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-116-0000

Safety Equipment Standards for Off-Road Vehicles

(1) The Transportation Safety Division of the Department of Transportation adopts the following equipment requirements for off-road vehicles that operate in areas as described in ORS 821.020.

(2) For purposes of this rule, the following definitions apply:

(a) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain;

(b) "Motor vehicle" means any vehicle which is self-propelled;

(c) "Motorcycle" means any motor vehicle designed to travel with not more than two wheels in contact with the ground, and so that the driver sits astride the vehicle frame and a Class III all-terrain vehicle as defined in ORS 801.194;

(d) "Multi-wheeled motorized vehicle" means a Class I all-terrain vehicle as defined in ORS 801.190 and any other motor vehicle, except a tractor, designed to travel with three or more wheels in contact with the ground, with the driver sitting astride the vehicle frame; and

(e) "Class II all-terrain vehicle" means any motor vehicle as defined in ORS 801.193.

(3) Safety equipment standards for off-road vehicles subject to this rule are:

(a) Brakes. All vehicles must have disc or drum brakes that are operable and effective in bringing the vehicle to a stop;

(b) Chain Guard. Any vehicle equipped with a chain must have a guard so designed that in the event of failure, the chain will remain under the vehicle;

(c) Fire Extinguisher. All vehicles, except motorcycles and multi-wheeled motorized vehicles, must be equipped with a functional dry chemical type fire extinguisher of at least two pounds capacity that is approved by the Underwriters Laboratories or other acceptable testing agency;

(d) Flag. All vehicles must display a highly visible red or orange flag when operating on the sand. The flag must:

(A) Be displayed at a height of at least nine feet from the ground level when the vehicle is under power; and

(B) Have one side that is at least eight inches wide, and be at least twelve inches long;

(e) Floor Pan/Foot Pads. All vehicles must have floor pans, with the exception of motorcycles and multi-wheeled motorized vehicles, that must have foot pads or the equivalent, so designed and mounted as to keep the driver's and any passenger's feet within the frame of or from underneath the vehicle;

(f) Fuel Tank. All fuel tanks must be:

(A) Securely mounted;

(B) Properly constructed of metal, plastic, or other industry safety approved material;

(C) Properly constructed for the carrying of fuel; and

(D) All connections must be kept secure and tight.

(g) Muffler. All vehicles must be equipped with a muffler that conforms to the current noise level and defect standards of the Department of Environmental Quality for vehicles operated off-road;

(h) Roll Bar. All vehicles, except motorcycles and multi-wheeled motorized vehicles, must be equipped with a roll bar or other enclosure that will support the vehicle's weight and be so designed as to protect the occupants' head(s) when the vehicle is resting on this roll bar or enclosure;

(i) Seats. All vehicles must be equipped with a securely mounted seat for the driver and each passenger;

(j) Seat Belts. All vehicles, except motorcycles and multi-wheeled motorized vehicles, must be equipped with securely mounted seat belts of the quick-release type, readily available for use for the driver and each passenger;

(k) Windshield Wipers. All vehicles equipped with a windshield, except motorcycles, must have an effective working windshield wiper;

(l) Headlights and Taillights. At any time from one-half hour after sunset to one-half hour after sunrise, all vehicles shall be equipped with and display headlights and taillights. Motorcycles and multi-wheeled motorized vehicles shall be equipped with a minimum of one headlight and one taillight.

Stat. Auth.: ORS 184.616, 184.619 & ORS 821.030

Stats. Implemented: ORS 821.010-821.040

Hist.: MV 65, f. & ef. 12-15-75; MV 17-1983, f. & ef. 12-5-83; MV 12-1986, f. & ef. 8-22-86; Administrative Renumbering 3-1988, Renumbered from 735-080-0200; DMV 10-2003(Temp), f. & cert. ef. 7-17-03 thru 1-12-04; DMV 2-2004, f. & cert. ef. 1-15-04

.....

Adm. Order No.: DMV 3-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Adopted: 735-176-0015, 735-176-0018

Rules Amended: 735-176-0000, 735-176-0010, 735-176-0020, 735-176-0030, 735-176-0040

Subject: Division 176 rules relate to taxation of Use Fuel in Oregon. The majority of the changes are necessary to administer new statutes created by House Bill 2997 (Chapter 99, Oregon Laws 2003) passed during the 2003 Legislative Session. New rule 735-176-0015 describes the fuel sales documentation and customer identification requirements for sellers of fuel at non-retail facilities. New rule 735-176-0018 describes tax collection requirements for special situations where non-retail and retail facilities are operated separated by distance or by time of sale. Amendments also replace or delete outdated or unnecessary language.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-176-0000

Definitions

(1) "Dual Operations Facility" means a non-retail facility where fuels are dispensed at retail and non-retail with either a time separation of the retail and non-retail operations or a separation of the retail and non-retail pump islands by a distance as approved by the Oregon State Fire Marshal.

(2) "Non-retail facility" means an unattended facility where Class I flammable liquids are dispensed through a card or key activated fuel dispensing device to non-retail customers as defined in ORS 480.310(2).

ADMINISTRATIVE RULES

(3) "ODOT Fuels Tax Group" means the organizational unit within the Financial Services, Central Services Division of the Oregon Department of Transportation that is primarily charged by the Division with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(4) "User" or "user of fuel in a motor vehicle" as used in ORS 319.510 through 319.880 and OAR chapter 735, division 176, means a person as defined in ORS 319.520(8) who uses fuel in a motor vehicle as defined in ORS 319.520(11). "User" or "user of fuel in a motor vehicle" shall also include, but not be limited to, a lessor who allows a motor vehicle to operate on the highways of this state and allows the lessee to use fuel in that motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 & ORS 319.510-319.880
Stats. Implemented: ORS 319.510-ORS 319.880
Hist.: MV 22, f. 2-15-63; MV 4-1980, f. & ef. 3-4-80; MV 24-1981, f. 10-30-81, ef. 11-1-81; MV 3-1982, f. & ef. 1-4-82; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0010

Use Fuel Seller Requirements — Except for Sellers as defined in ORS 319.520(9)(b)

(1) Seller License. Sellers of fuel who do not sell for use in a motor vehicle are not required to be licensed. They must, however, maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years.

(2) Collecting Tax on Sales.

(a) Persons who sell fuel into the fuel tanks of motor vehicles, except for sellers of fuel at non-retail facilities as defined in ORS 319.520(9)(b), shall collect the Oregon tax at the time of sale except for sales into:

(A) Vehicles displaying a valid ODOT Motor Carrier Transportation Division weight receipt or pass;

(B) Vehicles displaying a valid use fuel vehicle emblem issued by ODOT Fuels Tax Group;

(C) Vehicles displaying a United States Government license plate or the registration plate for a government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(D) Farm tractors or other agricultural implements only incidentally operated on the highway as defined in ORS 319.520(6); and

(E) Cans, barrels, or containers other than the fuel supply tank of a motor vehicle.

(b) If the tax is not collected, pursuant to the exception under subsection (2)(a) of this rule, the seller shall show on the sales invoice:

(A) The U.S. Government plate number;

(B) The registration plate number for a government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(C) The ODOT Motor Carrier Transportation Division weight receipt or pass number;

(D) ODOT use fuel emblem number; or

(E) Notation of delivery into farm equipment, can or barrel.

(3) Record Requirements. Every seller of fuel for use in a motor vehicle shall maintain and keep records for a period of three years as follows:

(a) A purchase journal or other record of fuel received supported by purchase invoices;

(b) A stock summary of all bulk fuel storage showing the gallons of fuel handled during each month with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain;

(c) A physical inventory of bulk fuel storage shall be recorded at least at the end of each month and preserved for audit purposes;

(d) A record shall be kept of each sale or other withdrawal of fuel from bulk storage. An invoice is not required to be prepared for fuel delivered into the fuel tank of a vehicle with a combined gross weight of 26,000 pounds or less, for which the tax is paid at the time of sale, unless the operator of the vehicle requests an invoice; and

(e) Invoices upon which tax collections are recorded shall be kept separate and apart from other sales invoices.

Stat. Auth.: ORS 184.616, 184.619 & ORS 319.510-319.880
Stats. Implemented: ORS 319.621, ORS 319.665 & ORS 319.697
Hist.: MV 22, f. 2-15-63; MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; MV 23-1981, f. 10-30-81, ef. 11-1-81; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0015

Use Fuel Seller Requirements — For Sellers as Defined in ORS 319.520(9)(b)

(1) A seller, identified by ORS 319.520(9)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is owned by the seller, must retain written certification

signed by the purchaser on forms approved by the Oregon Department of Transportation that the use of the fuel is exempt from the tax imposed under ORS 319.530. The form will contain:

(a) The name and address of the purchaser;

(b) The reason that the Use Fuel tax should not be collected by the seller; and

(c) A statement from the purchaser that for all Use Fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are exempt from Use Fuel taxation under ORS 319.510 through 319.880.

(2) A seller, identified by ORS 319.520(9)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is not owned by the seller, must provide, upon request of the ODOT Fuels Tax Group, the account number of the purchaser and the name and address of the non-retail seller who owns the account.

(3) Sellers, identified by ORS 319.520(9)(b), who do not operate non-retail facilities in Oregon but who own accounts of purchasers who purchase fuel at Oregon non-retail facilities, must be licensed with the ODOT Fuels Tax Group and are required to comply with all of the provisions of ORS 319.510 through 319.880 and this rule.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 319.510-319.880

Stats. Implemented: ORS 319.520 & ORS 319.665

Hist.: DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0018

Special Situations — Dual Operations Facilities

(1) For Dual Operations Facilities where retail and non-retail operations are differentiated by a physical separation of the retail and non-retail pump islands at a distance required by the State Fire Marshal:

(a) All Use Fuel tax procedures for fuel dispensed from the non-retail facilities unattended by the owner, employees, or other agents of the owner of the non-retail facilities shall be made pursuant to OAR 735-176-0015.

(b) All Use Fuel tax procedures for fuel dispensed from the retail facilities shall be made pursuant to OAR 735-176-0010.

(2) For Dual Operations Facilities where retail and non-retail operations are differentiated by a time separation of retail and non-retail operations from the same pumps:

(a) All Use Fuel tax procedures for fuel dispensed from the facilities during time periods where non-retail operations are permitted by the State Fire Marshal shall be made pursuant to OAR 735-176-0015.

(b) All Use Fuel tax procedures for fuel dispensed from the facilities during time periods where retail operations are required by the Oregon State Fire Marshal shall be made pursuant to OAR 735-176-0010.

Stat. Auth.: ORS 184.616; ORS 184.619 & ORS 319.510-319.880

Stats. Implemented: ORS 319.520 & ORS 319.665

Hist.: DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0020

Use Fuel User Requirements

(1) License Requirements:

(a) Persons who use fuel as defined in ORS 319.520(4) in a motor vehicle, except those excluded in ORS 319.550 must first apply for and obtain a user license and a vehicle emblem for each vehicle;

(b) User licenses are issued on a permanent or on a temporary basis as required and are generally issued without a faithful performance bond;

(c) Emblems are issued for specific vehicles on an annual basis or for temporary periods up to 30 days; and

(d) The law imposes a mandatory penalty of 25 percent of the tax for using fuel without first obtaining a valid license or vehicle emblem.

(2) Record Requirements. Every user of fuel, except those who operate a vehicle with a light weight of 8,000 pounds or less, shall maintain and keep the following records:

(a) A purchase journal or other record of fuel received supported by purchase invoices;

(b) A record of the number of miles traveled over Oregon highways;

(c) If fuel is purchased in bulk, a stock summary of fuel handled during each month with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain;

(d) If fuel is stored in bulk, a physical inventory shall be taken at least at the end of each month and preserved for audit purposes;

(e) All required records shall be kept within the State of Oregon and preserved for a period of three years; and

(f) In the event the auditor for the state is, at any time, required to be outside of Oregon in order to examine such records, it will be required that the licensee reimburse the state for travel expense, including transportation, meals, and lodging costs incurred by said auditor.

(3) Tax reports:

ADMINISTRATIVE RULES

(a) Every licensed user of fuel who operates a vehicle which is subject to the Use Fuel Tax Law is required to file a monthly report of miles operated and fuel used, except that:

(A) Users with a monthly tax obligation of less than \$300 are authorized to file quarterly reports; and

(B) Licensed users who operate a vehicle of 8,000 pounds light weight or less may file an annual report. Users of fuel in this classification may keep an accurate record of Oregon highway miles operated and compute the gallons of fuel used by applying a reasonable miles per gallon figure.

(b) Licensed users who have paid any Oregon tax on fuel purchased from Oregon sellers of fuel should detail such purchases in Schedule 2 of the tax report form and treat such transactions as credits against their total tax liability;

(c) Tax report due dates are as follows:

(A) Monthly reports on 20th day of next calendar month;

(B) Quarterly tax reports:

(i) First Calendar Quarter — April 20

(ii) Second Calendar Quarter — July 20

(iii) Third Calendar Quarter — October 20

(iv) Fourth Calendar Quarter — January 20

(C) Annual reports: March first of following year.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 319.510-319.880

Stats. Implemented: ORS 319.550, ORS 319.690, ORS 319.692 & ORS 319.697

Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; Administrative Renumbering 3-1988, Renumbered from 735-012-0036; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0030

Use Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.694(2) allows the ODOT Fuels Tax Group to waive penalties for late payment of use fuel tax.

(2) An entity or a person may submit a written request for waiver of late payment penalties to the ODOT Fuels Tax Group.

(3) Upon receipt of a written request for waiver of late payment penalties, the ODOT Fuels Tax Group shall use the following criteria to determine if there was reasonable cause for the late payment and no intent on the part of the taxpayer to avoid payment:

(a) Timely filing of past tax reports and tax payments by the licensee;

(b) Accuracy of past tax reports by the licensee;

(c) Audit findings of prior audits conducted upon licensee; and

(d) Any other criteria the ODOT Fuels Tax Group may find to be informative and appropriate.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 319.694

Stats. Implemented: ORS 319.694

Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-012-0045; DMV 3-2004, f. & cert. ef. 1-15-04

735-176-0040

Use Fuel Tax Credit of Interest on Tax Overpayments

(1) The ODOT Fuels Tax Group may allow interest credit for overpayments of use fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purpose of ORS 319.694(3)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit period" shall mean a period not to exceed three years from the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period shall not be:

(a) Considered as interest on overpayments in the current audit period; or

(b) Subject to credit under ORS 319.694(3)(b).

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 319.694

Stats. Implemented: ORS 319.694

Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-012-0055; DMV 3-2004, f. & cert. ef. 1-15-04

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTD 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Adopted: 740-100-0015

Subject: This rule establishes the qualifications and requirements that a person must meet for commercial vehicle inspector certification, standards for maintaining certification and grounds for revok-

ing certification. The Oregon Forest Products Transportation Association requested that the rule be adopted in order to enhance commercial vehicle safety inspection uniformity among the various governmental agencies that conduct inspections in Oregon.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-100-0015

Commercial Vehicle Inspector

(1) The Department may certify an individual as a commercial vehicle inspector pursuant to ORS 810.560 if the individual:

(a) Is an employee of the Department and:

(A) Successfully completes a commercial vehicle safety inspector training program administered by the Department; and

(B) Performs the minimum number of North American Standard safety inspections as prescribed by the Commercial Vehicle Safety Alliance;

(b) Is employed by an agency, or party, under contract with the Department to conduct commercial vehicle inspections and:

(A) Successfully completes a commercial vehicle safety inspector training program administered by the Department;

(B) Performs the minimum number of North American Standard safety inspections as prescribed by the Commercial Vehicle Safety Alliance; and

(C) Has disclosed to the Department any pecuniary interest in, or current employment relationship with, a regulated motor carrier, and if requested by the Department, has divested of any such pecuniary interest.

(2) A commercial vehicle inspector certification may be revoked by the Department if Department records or investigation indicates that the inspector:

(a) No longer meets the criteria established in section (1) of this rule;

(b) Has repeatedly failed, without adequate reason, to maintain annual equipment or driver out-of-service rates that are reasonably consistent with, or exceed, Oregon out-of-service averages;

(c) Has failed to adhere to the Commercial Vehicle Safety Plan published by the Department; or

(d) Has committed malfeasance in the performance of official duties.

(3) A commercial vehicle inspector who has had their certification revoked, may be re-certified only after Department approval.

Stat. Auth.: ORS 823.011 & ORS 825.232

Stats. Implemented: ORS 810.560, ORS 825.210 & ORS 825.250

Hist.: MCTD 1-2004, f. & cert. ef. 1-15-04

Department of Veterans' Affairs Chapter 274

Adm. Order No.: DVA 15-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 12-1-03

Rules Amended: 274-040-0015, 274-040-0030

Rules Repealed: 274-040-0015(T), 274-040-0030(T)

Subject: OAR 274-040-0015 and 274-040-0030 are being amended and supersede the Temporary Rule filed on November 14, 2003, which was effective upon filing through February 17, 2004.

274-040-0015(3) is being amended to further clarify the guidelines regarding admission to the Oregon Veterans' Home (OVH). The admission priority process which is currently based solely on the date of completed application is being amended to include the level of care requirements that the OVH Contractor's staff can legally meet at the time of admission.

The Oregon Veterans' Home (OVH) has been approved for Medicaid certification and is eligible to participate in the Medicaid program. OAR 274-040-0030 is being amended to include Medicare and Medicaid as additional sources of revenue/income when determining to whom the Covered Care Program account is available.

Rules Coordinator: Charles E. Gehley—(503) 373-2142

274-040-0015

Eligibility for Admission to the Oregon Veterans' Home

(1) To be eligible for admission to the Oregon Veterans' Home (home), an applicant must be:

(a) A resident of Oregon on the date of application;

(b) Able to pay all costs of care not paid by the United States Department of Veterans Affairs;

(c) A veteran as defined by **United States Code, Title 38, section 101** (This publication is on file with the Oregon Department of Veterans'

ADMINISTRATIVE RULES

Affairs, 700 Summer Street NE, Salem, Oregon, and is available for public review Monday through Friday between the hours of 8 a.m. and 5 p.m.); and

(d) In need of nursing home care.

(2) An applicant must have a medical examination by a physician within 90 days prior to the date of admission. The results of the examination must state that the applicant:

(a) Does not require medical care for which the home is not equipped or staffed to provide; and

(b) Does not have violent traits which may prove dangerous to the applicant, residents of the home, staff or others, provided however, that nothing in this section shall be interpreted to prevent the admission of residents diagnosed with Alzheimer's Disease or other dementia for whom the facility is equipped and prepared to provide care for common behavior problems and recommended behavior management, and that no one shall be denied admission on the basis of being a potential danger to self or others unless that condition is documented by the attending physician.

(3) Eligible veterans shall be admitted to the home in priority order based on the date of completed applications and level of care requirements, except that recipients of the Medal of Honor shall have first priority.

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

Stat. Auth.: ORS 406.030, 406.050, 408.510, 408.520 & 408.530

Stats. Implemented: ORS 406.030, 406.040 & 406.050

Hist.: DVA 3-1998, f. & cert. ef. 3-13-98; DVA 14-2003(Temp), f. & cert. ef. 11-14-03 thru 2-14-04; DVA 15-2003, f. & cert. ef. 12-31-03

274-040-0030

Covered Care

(1) It is the expressed policy of the Director of Veterans' Affairs (Director) to make the Oregon Veterans' Home (OVH) financially available to current or potential OVH resident by means of the Director's Covered Care Program described more fully below.

(2) Within the fund established by the Director pursuant to ORS 406.050, an account is designated for donations to be used by the Director consistent with this Covered Care Program. Funds held within this account will be used by the Director exclusively for the purpose of assisting OVH residents whose income, Medicare benefits, Medicaid benefits, and any other assets, as determined by the Director, are insufficient to meet the financial requirements necessary for the cost of OVH care.

(3) When determining to whom Covered Care Program assistance will be made available, the Director may take into consideration various factors, including but not limited to:

(a) The amount of funds in the Covered Care Program account available for this purpose;

(b) The anticipated future deposits into the Covered Care Program account;

(c) The amount of any present commitments from the Covered Care Program account;

(d) All available sources of revenue or income to a particular resident, including but not limited to:

(A) United States Department of Veterans Affairs (USDVA) payments;

(B) Social Security benefits;

(C) Other pensions;

(D) Millennium Bill benefits;

(E) Medicare benefits;

(F) Medicaid benefits;

(G) Annuities;

(H) Savings; and

(I) Investments.

(e) The amount of funds available to a particular or potential resident from members of his/her family, or others who are willing to provide financial assistance and agree to be legally obligated to meet such financial obligations of the resident;

(f) Whether or not the available Covered Care Program assistance will satisfy the entire gap in necessary funding for OVH care on behalf of the resident or potential resident;

(g) Whether or not the intended beneficiary of the Covered Care Program assistance is a current OVH resident.

(4) The maximum monthly amount of assistance payable from the Covered Care Program account for the care received by any OVH resident shall be \$1,150.

(5) The payment of Covered Care Program assistance on behalf of any OVH resident is subject to the sole discretion of the Director. The Director may refuse, terminate, or suspend Covered Care Program assistance to any OVH resident at any time without notice. The Director shall be under no obligation to provide Covered Care Program assistance to any OVH resident or to solicit funds to meet the financial needs of the OVH resident, his/her family, or others.

(6) When determining to terminate or suspend Covered Care Program assistance to any current recipient, the Director may take into consideration various factors, including but not limited to:

(a) Any reported change in the financial status of the recipient or other OVH care payment provider;

(b) Any misrepresentation or omission of material facts in the application for the Covered Care Program assistance or otherwise;

(c) The behavior of the recipient while in the OVH;

(d) The feasibility of appropriate care for the recipient at the OVH;

(e) The availability of funds in the Covered Care Program account.

(7) If all of the funding of an OVH resident, or potential resident, cannot be met with allowable assistance from the Covered Care Program, no amounts will be committed by the Director or paid from the Covered Care Program account.

(8) Applications for assistance from the Covered Care Program account shall be made in such manner and detail, and on such forms, as the Director, in his sole discretion, shall determine.

(9) Applications generally will be prioritized for consideration based on the date of completed receipt by the Director. The Director may, however, consider applications in such other order and at such other times as by him is deemed reasonable.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 4-2002(Temp), f. & cert. ef. 4-5-02 thru 10-2-02; DVA 7-2002, f. & cert. ef. 9-24-02; DVA 10-2002(Temp), f. 12-27-02, cert. ef. 1-1-03 thru 6-27-03; DVA 9-2003(Temp), f. & cert. ef. 8-21-03 thru 2-17-03; DVA 12-2003(Temp), f. & cert. ef. 10-1-03 thru 2-17-04; DVA 14-2003(Temp), f. & cert. ef. 11-14-03 thru 2-14-04; DVA 15-2003, f. & cert. ef. 12-31-03

Adm. Order No.: DVA 1-2004(Temp)

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04 thru 7-13-04

Notice Publication Date:

Rules Amended: 274-020-0388

Subject: This rule is being amended to include the option which will allow the borrower of a daily simple loan, with an interest rate of less than 7%, to request that the Director advance funds for the payment of property taxes on loans.

The language in this rule is also being amended to modify the requirement that a borrower must have 30% equity in the security before they are allowed to directly pay their own property taxes and insurance. The revision shall require that the borrower need only have 20% equity prior to requesting to directly pay their own property taxes.

Rules Coordinator: Charles E. Gehley—(503) 373-2142

274-020-0388

Property Tax Amortization and Escrow Accounting

(1) Except as otherwise provided herein, payments required on all loans shall include an amount, which represents advances, for taxes paid by the Director of Veterans' Affairs (director) on the security:

(a) The amounts shall be determined each year by dividing the amount advanced by the number of loan payments due during the year, increased to the next whole dollar;

(b) The amounts so determined shall be added to and become part of the loan payment unless full payment of the advance is made pursuant to subsection (c) or (d) of this section;

(c) As soon as possible after taxes are paid on November 15th of each year, the director may notify each borrower by mail of the amount of the tax advance. If full payment of the tax advance is made to the director, the amount determined in subsection (a) of this section shall be deleted from the loan payments. Upon such payment the borrower shall be credited with prior loan payments made to the extent of the amounts contained therein that represent repayment of the tax advance;

(d) If for any reason the taxes cannot be paid on November 15th, the director will send the notice as provided in subsection (c) of this section as soon as possible after the taxes are paid;

(e) Effective with taxes paid in November of 1990 (1990-91 taxes) through November of 2003 (2003-2004 taxes), the director generally did not advance funds for the payment of taxes on property that was security for a loan being charged less than seven percent interest unless an escrow account had been established on the loan for the payment of taxes. The interest rate charged was the "loan rate" or "composite rate" where more than one loan (with different interest rates) is secured by the property;

(f) Effective with taxes (including delinquent taxes) to be paid in November of 2004 (2004-2005 taxes), the director may approve a borrower's request to advance funds for the payment of taxes on property that is

ADMINISTRATIVE RULES

security for a loan unless an escrow account had been established on the loan for the payment of taxes. The interest rate being charged is the "loan rate" or "composite rate" where more than one loan (with different interest rates) is secured by the property;

(g) Notwithstanding the provisions of subsection (1)(e) and (1)(f) of this rule, the director may advance funds for the payment of taxes on property that is security for a loan under the provisions of the Servicemembers Civil Relief Act. In addition, the director may advance funds to pay property taxes if sufficient funds are not available in the escrow account, by overdrawing the escrow account balance.

(2) The director may allow owners of the security to directly pay the taxes and/or hazard insurance due on the security, subject to the following conditions:

(a) For existing accounts or qualified assumptions of existing accounts, the owner of the property must make written application to the director on a form prescribed by the director. Said application also must conform with the following:

(A) The application must be submitted by September 1st of the year application is made;

(B) At the time of application, payments on the loan must be current and the applicant's credit history must be satisfactory as determined by the director at his sole discretion and,

(C) The loan balance, including any accruals, at the time of application must not be more than 80 percent of the "real market value" of the security as shown by the county tax assessor.

(D) If a request is approved, any funds the director holds in an applicable escrow account, which are not scheduled for disbursement will be returned to the borrower and the borrower will be responsible for any future disbursements.

(b) For new loan applications, the applicant must make written request to the director. Said application also must conform with the following:

(A) The loan-to-value ratio must be 80 percent or less of the net appraised value;

(B) The loan must have no restrictions by virtue of FHA mortgage insurance or private mortgage insurance that the lender pay taxes and/or insurance.

(3) All applications, for permission to pay taxes and/or hazard insurance directly, will receive a written approval or disapproval from the director. If the application is approved, the applicant will be advised of the date when the director will discontinue making disbursements, if applicable and the date the loan payment will be adjusted, if necessary.

(4) The director may revoke any permission granted concerning the payment of taxes and/or hazard insurance on the security by giving the owner of the security 30 days written notice of the revocation, except as otherwise provided herein. If the director advances funds to pay unpaid taxes and/or hazard insurance, any advance by the director for such a shortage/deficiency also will constitute immediate revocation by the director of permission for the owner to pay directly any taxes and/or hazard insurance due on the security, and the account will revert to the last signed agreement between the director and borrower for the payment of taxes, hazard insurance and other obligations. Any advances by the director, including any interest and fee, shall be paid back within the remaining payment/escrow year. The borrower may not change this obligation without prior written approval from the director.

(5) Sections (1), (2), (3) and (4) of this rule are not applicable to payments made under contracts for the purchase of state-owned property. Contract purchaser(s) may prepay the current year's property taxes in a lump sum and have the tax portion removed from the following year's payment(s).

(6) Monthly simple interest home improvement loans are handled as follows:

(a) If the borrower has an existing account with ODVA the taxes will continue to be paid per the terms of that account;

(b) When an existing account is paid in full and the loan-to-value ratio (LTV) is 80 percent or less of the net appraised value, the borrower may at the Director's discretion pay their own taxes directly to the county and the borrower may at the Director's discretion pay their own hazard insurance;

(c) If the borrower does not have an existing account and the LTV is greater than 80 percent, the borrower must pay their taxes and hazard into an escrow account as part of their standard payment.

(7) Pursuant to the provisions of ORS 407.169, beginning November 1, 1990, escrow accounts are available for the prepayment of estimated property taxes and insurance. All borrowers with loans, and all purchasers buying property from the director on a land sale contract, based on a daily simple interest calculation, may make prepayments of estimated property taxes into an escrow account, subject to the following conditions:

(a) The owner of the property must make written application to the director on a form prescribed by the director;

(b) Applicants will have the option of either repaying the previous year's tax advance as provided by section (1) of this rule, or of permitting said tax advance to remain part of the principal balance on the loan with the payments of said loan adjusted to repay the tax advance with interest over the remaining life of the loan.

(8) On monthly simple interest loans with escrow accounts, the required escrow payment may be based, inter alia, on the preceding year's disbursements for such items as property taxes, fire and extended coverage premiums, other required insurance premiums, condominium/homeowners dues, and bankrofted amounts. In cases of unassessed new construction, the estimate may be based, inter alia, on the assessment of comparable residential property in the market area.

(9) The director will pay interest on the escrow account as provided by ORS 86.245(1).

(10) Effective May 24, 1995, all escrow accounts on monthly simple interest loans and tax escrows on daily simple interest loans will be administered in the following manner:

(a) The director may require a cushion that shall be no greater than 1/6 of the estimated total annual disbursements from the escrow account. Estimated disbursements may be modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items);

(b) At the end of an escrow account computation year, an aggregate analysis will be completed on each escrow account to determine the borrower's escrow account payment(s) for the new payment year. The borrower will be notified of any shortage, deficiency, or surplus in the escrow account and the amount of escrow account payment to be included in the loan payment;

(c) If the loan is two months or more delinquent in payments an analysis will not be done until the loan is brought current.

(d) If the analysis determines there is not sufficient money in the escrow account to pay the required disbursements, the shortage/deficiency may be advanced by the director. The required escrow payments on the loan will be increased to recover any interest, fee and/or advance by the director for such a shortage/deficiency, or the borrower may repay the advance, interest and/or fee in a lump sum;

(e) If the analysis determines there is a surplus in the escrow account equal to or greater than \$25, the entire surplus shall be refunded to the borrower. If the surplus is less than \$25, this amount will be retained in the escrow account and credited against the next year's escrow payments;

(f) A statement itemizing all escrow account activity, (annual escrow statement) will be provided to the borrower each year.

(11) The following definitions apply to section 10 above:

(a) "Aggregate analysis" — to analyze the escrow account by calculating the sufficiency of escrow funds as a whole, as opposed to calculating components separately.

(b) "Cushion" — funds that the director may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account.

(c) "Deficiency" — the amount of a negative balance in an escrow account.

(d) "Escrow account" — any account that the director establishes or controls on behalf of a borrower to pay taxes, insurance premium, or other charges, as applicable.

(e) "Escrow account computation year" — a 12-month period that the director establishes for the escrow account.

(f) "Shortage" — an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

(g) "Surplus" — an amount by which the current escrow account balance exceeds the target balance of the account.

(h) "Target balance" — the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion.

Stat. Auth.: ORS 86.240, ORS 86.245, 406.030, 407.115, 407.169 & 407.275

Stats. Implemented: ORS 406.030 & ORS 407.275

Hist.: DVA 26-1982(Temp), f. & ef. 10-1-82; DVA 3-1983, f. 1-14-83, ef. 1-15-83 and Suspended by DVA 4-1983(Temp); DVA 4-1983(Temp), f. & ef. 2-1-83; DVA 10-1983, f. 9-8-83, ef. 2-1-84; DVA 13-1983, f. & ef. 11-1-83; DVA 10-1984, f. 10-8-84, ef. 10-15-84; DVA 9-1985, f. 6-20-85, ef. 7-1-85; DVA 2-1989, f. & cert. ef. 6-1-89; DVA 2-1990, f. & cert. ef. 2-1-90; DVA 1-1991, f. & cert. ef. 5-1-91; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1995, f. 5-23-95, cert. ef. 5-24-95; DVA 11-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-2001, f. & cert. ef. 7-23-01; DVA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 7-13-04

ADMINISTRATIVE RULES

Employment Department Chapter 471

Adm. Order No.: ED 16-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-4-04

Notice Publication Date: 11-1-03

Rules Adopted: 471-010-0057

Rules Amended: 471-010-0050, 471-010-0051, 471-010-0054

Subject: The Employment Department is proposing to adopt a new rule regarding audit authority and written agreements with entities having access to Employment Department information; and to amend existing rules to reflect updated definitions and practices, and to bring them into compliance with HB 2300 (Chapter 773, Oregon Laws 2003); HB 3120 (Chapter 749, Oregon Laws 2003).

Rules Coordinator: Richard L. Luth—(503) 947-1724

471-010-0050

Definitions

(1) "Agent" means an individual who is authorized to act for or in the place of another individual or entity.

(2) "Customer" means any employer, individual, public agency, public employee (other than Oregon Employment Department staff in the performance of duty), non-governmental entity or member of the public that provides information to the department or receives a department service.

(3) "Confidential information" means information obtained from employing units, employees or other individuals pursuant to ORS Chapter 657.

(4) "Discharge of duties" means the duties related to the department programs and services pursuant to ORS Chapter 657, which includes, but is not limited to:

(a) Administration of the department including hiring, appointing and evaluating Oregon Employment Department staff, hosted workers and others who may provide program, services or support functions for the department. This does not include accessing records for the purpose of reference checks made in internal recruitment, hiring or promotion processes.

(b) Delivery of department and workforce programs and services in accordance with state or federal law;

(c) Cooperation with public employees in federal and state agencies administering unemployment insurance laws including, but not limited to system administration, coverage, collection of contributions, determination of eligibility and payment of benefits;

(d) Cooperation with public employees in state agencies administering recognized Oregon compensation and retirement, relief or welfare laws;

(e) Administration of federal or state grant programs awarded to the department in accordance with applicable laws, regulations or guidelines associated with the grant program;

(f) General duties of an agency head including, but not limited to cooperation with law enforcement and elected officials; or

(g) Cooperation with public employees in federal and state agencies charged with enforcing anti-discrimination and fair employment practice laws.

(5) "Functional control" means supervision by an Employment Department management employee over the work activities of a hosted worker, in the area of the public labor exchange (selecting and referring job seekers on employer openings on jobs listed with the Employment Department, directly assisting employers in listing jobs, and providing marketing or outreach services to the business community).

(6) As used in ORS Chapter 657.665(3)(a), the following terms have the following meaning:

(a) "Governmental planning functions" means duties authorized by law which are undertaken by state, federal, or local government agencies, to facilitate policy decisions about the future. These functions include, but are not limited to, economic or similar modeling, impact analysis, projections, and forecasting;

(b) "Governmental performance measurement functions" means duties authorized by law which are undertaken by state, federal, or local government agencies regarding the success and impact of government programs;

(c) "Governmental program analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the impact and operation of government programs. These functions include, but are not limited to, fiscal analysis, budget analysis, and workload analysis;

(d) "Governmental socioeconomic functions" means duties authorized by law which are undertaken by state, federal, or local government

agencies to better understand the socioeconomic conditions in which the governmental entity is operating. These functions include, but are not limited to, the analysis of demographic, labor force, employment, and income trends; and

(e) "Governmental policy analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to determine or better understand the impact of policy choices and decisions. These functions include, but are not limited to, economic impact analysis, trend analysis, and economic or similar modeling.

(7) "Hosted Worker" means a non-Department employee or volunteer who works, at least partially, under the functional control of an Employment Department management staff. The roles and responsibilities as well as the duties and confidentiality implications must be addressed in a written agreement with the Hosted Worker's actual employer or the Worker if there is no employer.

(8) "Informed consent" means that, prior to collecting or disclosing information from customers:

(a) The customer shall be informed of:

(A) How the information will be used;

(B) The authority which authorizes the collection or disclosure of the information;

(C) Whether the collection or disclosure of the information is mandatory or voluntary;

(D) The effects on the customer, if any, of not allowing collection or disclosure of the information; and

(E) The customer's ability to "opt in" or "opt out" of giving their consent for their information to be collected or disclosed.

(b) If the information from the customer is to be submitted to the Employment Department by a one-stop delivery system partner for a cross-match with Employment Department information, the customer shall also be informed that:

(A) The information may be shared with the Employment Department; and

(B) The information to be shared may be matched with information from Employment Department records.

(9) "Need-to-Know" means that access to, possession of, or other use of customer-related information is essential in order to carry out official duties. It does not include:

(a) Accessing confidential information to satisfy curiosity, for personal gain, or to provide the information to friends, spouses, relatives or any other unauthorized individual;

(b) Discussing confidential information among co-workers except as needed to perform official duties; or

(c) Disclosing or discussing confidential information on personal time or in non-work settings.

(10) "One-stop delivery system" means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(11) "One-stop delivery system partner" means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(12) "Party" has the same meaning as in ORS 183.310(6).

(13) "Person" has the same meaning as in ORS 183.310(7).

(14) "Recognized compensation and retirement, relief or welfare laws," includes, but is not limited to the following:

(a) Indigent Defense Program administered by the State Court Administrator pursuant to ORS 151.430 et. seq.;

(b) Compensation of Crime Victims administered by the Department of Justice pursuant to ORS 147.005 et. seq.;

(c) Housing for low income individuals administered by local housing authorities pursuant to ORS Chapter 456;

(d) Programs administered by the Family Health Insurance Assistance Program pursuant to ORS 735.722 et. seq.; and

(e) Programs administered by the Department of Human Services, including, but not limited to:

(A) Children, Adults and Families administering:

(i) Foster care maintenance payments for youth administered in conjunction with the Oregon Youth Authority pursuant to ORS 420.810 et. seq.;

(ii) Maintenance payments to individuals with occupational handicaps administered pursuant to ORS 344.511 et. seq.;

(iii) Temporary Assistance to Needy Families; and

(iv) Food Stamps.

ADMINISTRATIVE RULES

(B) Seniors and People with Disabilities.

(15) "Third Party" means an individual or entity other than an agent to whom the customer has authorized and directed disclosure.

(16) "Written disclosure agreement" means an interagency or other applicable agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

(17) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 657

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 6-1980, f. & ef. 9-8-80; 1DE 2-1984, f. & ef. 9-28-84; 1DE 3-1985, f. & ef. 12-16-85; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 7-2002(Temp), f. 9-27-02, cert. ef. 9-29-02 thru 3-28-03; ED 4-2003(Temp), f. 3-27-03, cert. ef. 3-29-03 thru 9-24-03; ED 12-2003, f. 9-19-03, cert. ef. 9-21-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

471-010-0051

Disclosure Charges

(1) The department may charge a reasonable fee for disclosures of records that involve more than incidental Oregon Employment Department staff time to prepare or require special processing. Examples of such disclosures include, but are not limited to requests under the Oregon Public Records law for numerous documents or records; or discreet, one-time only requests for a cross-match of records against department records. The department's designated Custodian of Records shall have the final authority to set and approve charges.

(2) The department shall submit invoices for the charges. Programming costs are due upon receipt of billing. The invoice shall note the agency's contract number.

(3) Charges for disclosure of records to private entities shall be set by written agreement with the entity.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 1-1982, f. & ef. 6-30-82; 1DE 2-1984, f. & ef. 9-28-84; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

471-010-0054

Authorized Disclosure

(1) The department is authorized to disclose confidential information or records to public agencies, provided that a written disclosure agreement is in place, under the following circumstances:

(a) In the "discharge of duties" as authorized by the department Director;

(b) For public administration of compensation and retirement, relief or welfare laws;

(c) To state and federal government agencies authorized by ORS Chapter 657;

(d) For the purpose of providing payment of unemployment insurance benefits; or

(e) To state, federal, and local government agencies for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions, consistent with Sections (2) and (3) of this rule.

(2) The department is authorized to disclose confidential information or records for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions by state, federal, or local agencies only if:

(a) The information is only used for planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis purposes;

(b) The information is necessary for the successful performance of those planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis activities; and

(c) The requesting agency's authorizing statute clearly and reasonably provides that the agency perform planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis functions.

(3) As used in ORS Chapter 657.665(3)(a), the terms "Governmental planning, performance measurement, program analysis, socioeconomic analysis and policy analysis functions" do not authorize the disclosure of confidential information:

(a) For purposes of mass mailings or marketing;

(b) For purposes of employer or other surveys;

(c) That was collected by way of surveys conducted for statistical purposes, including those conducted in collaboration with the U.S. Bureau of Labor Statistics;

(d) For program eligibility or enforcement purposes; or

(e) Regarding individual persons, unless those persons have given their informed consent for such disclosure.

(4) The department is authorized to disclose confidential information or records as authorized under ORS Chapter 657 to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires informed consent from the individual to whom the information pertains;

(b) Safeguards the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(5) The department is authorized to disclose confidential information or records to a third party or agent if:

(a) The Oregon Employment Department staff receives a written authorization signed and dated by the customer that specifically states the information that may be disclosed;

(b) The written authorization is witnessed or verified by Oregon Employment Department staff, or notarized;

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(6) The Department is authorized to disclose confidential information or records to one-stop delivery system partners within the state or local one-stop delivery system if:

(a) An agreement between the Employment Department and the one-stop delivery system partner(s), addressing confidentiality and authorized uses of the customer information, has been completed;

(b) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(c) Notice is provided that a consent, or authorization, is on file with the one-stop delivery system.

(7) Unless otherwise authorized by these rules the department is authorized to disclose confidential information or records to a customer only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer, or was previously provided to the customer; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer; and

(c) The Oregon Employment Department staff is sure that the customer's identity is the customer to which the information directly relates.

(8) The department is authorized to disclose confidential information or records to the customer's attorney or Certified Public Accountant without written authorization by the customer if the attorney or CPA affirmatively represents their client relationship with the customer. Disclosure to any other agent of the customer requires a written authorization under Section (5) of this rule.

(9) The department is authorized to disclose:

(a) Confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Unemployment Insurance benefit claim at a hearing before an Administrative Law Judge, once a request for hearing has been filed, or for a review arising under a state or federal program administered by the department to a party or agent of a party.

(b) Hearing information or records to a party or agent of a party to the hearing that have been entered into the official record of the hearing. Information or records submitted but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the information or records.

(10) The department is authorized to disclose confidential information or records pursuant to a customer's request, to a legislator or other elected official, or their staff, if the department receives a copy of the customer's letter to the legislator or other elected official. The department will treat the letter as the customer's authorization for the legislator or other elected official, or their staff, to disclose the information necessary to fulfill the customer's request. If no letter is available, Oregon Employment Department staff will provide customer information only after verifying with the legislator or other elected official, or their staff, that the contact is from the customer. If contact was not from the customer, a written authorization is required.

(11) The department is authorized to disclose confidential information or records without the customer's specific authorization and without a written disclosure agreement under the following provisions:

(a) In the "discharge of duties" as authorized by the department Director for Oregon Employment Department programs under ORS Chapter 657;

ADMINISTRATIVE RULES

(b) For mandatory disclosures under the Social Security Act or other federal law; or

(c) In accordance with state or federal laws requiring cooperation with properly identified law enforcement officers or District Attorneys in the performance of their duties and pursuant to a warrant for the arrest of an individual;

(d) To a court in a civil, criminal or grand jury proceeding to which the State of Oregon is a party;

(e) To authorized personnel of agencies of other states for the purpose of administering federally funded unemployment insurance programs, Temporary Assistance to Needy Families, child support enforcement programs, and food stamps;

(f) To properly identified officials of the United States Social Security Administration and the United States Department of Health and Human Services for audit and administration of the Supplemental Security Income Program;

(g) To properly identified officials of the United States Department of Agriculture for audit and administration of the food stamp program; or

(h) To properly identified officials of state and federal agencies charged with administration of fair employment practices and anti-discrimination activities.

(12) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws, elderly abuse reporting laws and patient abuse reporting laws.

(13) When an authorized representative of the department has been served a subpoena or other legal compulsory process to produce or disclose information from department records and the disclosure of such information is not specifically allowed under ORS Chapter 657 or this rule:

(a) The Director shall promptly inform the Assistant Attorney General assigned to the department of such demand;

(b) If the disclosure would, in the opinion of the Assistant Attorney General, be inconsistent with the provisions of state law or any policy or rule adopted pursuant to such law, the Assistant Attorney General shall take action to prevent the disclosure.

(14) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient.

(15) The Workforce Investment Act establishes a one-stop delivery system through which core services are provided, including those of the Wagner-Peyser Act (29 U.S.C. 49 et. Seq.), and where one-stop delivery system partners work on a collaborative and cooperative basis. The Workforce Investment Act also calls for the state to use Unemployment Wage Records, to the extent possible by state law, for the purpose of evaluation performance outcomes by other one-stop delivery system partners. It is the responsibility of the Director of the Employment Department to disclose all appropriate information to one-stop delivery system partners for necessary delivery of service, program evaluation, and performance measurement purposes. For these purposes, the following activities are within the Director's "discharge of duties:"

(a) The department is authorized to disclose confidential unemployment insurance wage records to one-stop delivery system partners for performance measurement purposes only under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) The individual for whom information is requested must have given informed consent for the information to be shared;

(D) There must be an interagency or other applicable agreement with the one-stop delivery system partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the Employment Department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job listing information provided by employers to the Employment Department for the purpose of administering the public labor exchange. At the employer's direction the following information may be shared with job seekers who are interested in a particular job opening:

(A) For "self-refer" job listings, the job will be listed with all needed information displayed directly for all interested job seekers, who may then contact the employer directly; or

(B) For "suppressed" job listings, the needed information is only provided to job seekers who are determined to be qualified for the job listing, and who are then given contact information by the Employment Department or authorized Hosted Workers.

(c) Information, not including employer wage records or employer tax data, necessary for providing services to businesses for activities within the one-stop delivery system or for activities of the regional Workforce Response Teams (described in the Governor's Executive Order #03-16). The information to be shared may include details such as who to contact, planned contact schedules, employer training needs, and results of contacts

and telephone calls for coordinated service delivery to the business community if there is an agreement with the one-stop delivery system partner(s) or the Workforce Response Team. The agreement should provide for steps in safeguarding confidential employer information

(d) The department is authorized to disclose job seeker information to one-stop delivery system partners under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) There is an interagency or other applicable agreement with the one-stop delivery system partner describing how the information will be used, that provides for the safeguarding of the information, and imposes sanctions for the unauthorized re-disclosure of the information;

(C) The individual for whom information is requested must have been provided with informed consent; and

(D) The information to be disclosed must be:

(i) Based on the one-stop delivery system partner's "need to know" to perform official duties of their program; or

(ii) The individual job seeker has specifically directed or authorized the sharing of the information.

(16) Oregon Employment Department staff, hosted workers and any other entities or individuals with access to Employment Department information are authorized to access confidential information only on a "need to know" basis, as needed to perform official duties.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & ORS 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; IDE 1-1981, f. & ef. 1-15-81; IDE 1-1982, f. & ef. 6-30-82; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 3-2001(Temp), f. 3-16-01, cert. ef. 3-18-01 thru 9-14-01; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 9-2002(Temp), f. 11-27-02 cert. ef. 12-1-02 thru 5-30-03; ED 9-2003, f. 5-22-03, cert. ef. 5-25-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

471-010-0057

Audit Authority and Written Agreements With Entities Having Access to Employment Department Information

(1) All written agreements with entities other than "Hosted Workers" that have access to Employment Department information shall stipulate that, no less than once a year, the entity shall conduct an audit of the processes by which the entity implements the agreement(s). The audits shall include, but are not limited to:

(a) How access to Employment Department information is granted;

(b) How access to Employment Department information is controlled;

(c) Why access to Employment Department information is granted, based on OAR 471-010-0054(14);

(d) Who is authorized to grant & revoke access to Employment Department information;

(e) What specific programs within the entity need access to Employment Department information;

(f) Which specific positions within the programs referenced in OAR 471-010-0057(1)(e) need access to Employment Department information;

(g) What specific information within the Employment Department information is needed;

(h) Whether access to Employment Department information is granted to contractors, who the contractor is, and why the contractor is being given access; and

(i) What "informed consent" if any, the entity uses when gathering information from its customers.

(2) These audits shall subsequently be submitted to the Employment Department, who shall have final authority to decide compliance with the procedures in OAR 471-010-0057(1).

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

.....

Adm. Order No.: ED 17-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-4-04

Notice Publication Date: 11-1-03

Rules Adopted: 471-030-0125

Rules Repealed: 471-030-0130, 471-030-0135, 471-030-0140, 471-030-0145

Subject: The Employment Department is proposing to adopt a new rule to consolidate existing "Drug & Alcohol" rules into a single section; to clarify current practices; and to address changes to ORS 657.176 as a result of the passage of SB 916 (Chapter 792, Oregon Laws 2003).

Rules Coordinator: Richard L. Luthe—(503) 947-1724

ADMINISTRATIVE RULES

471-030-0125

Drug/Alcohol Adjudication Policy

(1) Purpose. For purposes of any applicable provision of ORS 657.176, this rule establishes policy for adjudicating cases involving the use, sale, possession or effects of drugs or alcohol in the workplace.

(2) Definitions. For the purposes of this rule:

(a) For purposes of ORS 657.176(9)(a)(A) and 657.176(10)(a), “workplace” means the employer’s premises or any place at or in which an individual is performing services for the employer or otherwise is acting within the course and scope of employment.

(b) “Failure”, as used in ORS 657.176(9)(a)(C)(i) and (ii), does not include inadvertent oversight.

(c) For purposes of ORS 657.176(9)(a)(B), an individual “fails” a test for drugs or alcohol when the amount of drugs or alcohol determined to be present in the individual’s system, at the time of a test administered in accordance with the provisions of an employer’s reasonable policy or collective bargaining agreement, equals or exceeds the amount prescribed by such policy or agreement.

(d) For purposes of ORS 657.176(9)(a)(B), when an employer has a written zero tolerance policy against drugs or alcohol, an individual “fails” a test for drugs or alcohol if, at the time of a test administered in accordance with the provisions of an employer’s reasonable policy or collective bargaining agreement, the individual has any detectable level of drugs or alcohol present in the individual’s system.

(e) For purposes of ORS 657.176(13)(d), when an employer has a written zero tolerance policy for drugs or alcohol, an individual is “under the influence” of intoxicants if, at the time of a test administered in accordance with the provisions of an employer’s reasonable policy or collective bargaining agreement, the individual has any detectable level of drugs or alcohol present in the individual’s system.

(f) For purposes of ORS 657.176(9) and 657.176(13), “unlawful drug” means a drug which is unlawful to possess or distribute under Oregon law. This term does not include a drug prescribed and taken under the supervision of a licensed health care professional and used in accordance with the prescribed directions for consumption, or other uses authorized by law.

(g) “Connection with employment” as used in ORS 657.176(9)(a)(F) means when the individual is performing services for the employer.

(h) For purposes of ORS 657.176(9)(a)(F), an individual “tests positive” for alcohol or an unlawful drug when the amount of drugs or alcohol determined to be present in the individual’s system, at the time of a test administered in accordance with the provisions of an employer’s reasonable policy or collective bargaining agreement, equals or exceeds the amount prescribed by such policy or agreement.

(i) For purposes of ORS 657.176(9)(a)(F), when an employer has a written zero tolerance policy against drugs or alcohol, an individual “tests positive” for alcohol or unlawful drugs, at the time of a test administered in accordance with the provisions of an employer’s reasonable policy or collective bargaining agreement, the individual has any detectable level of drugs or alcohol present in the individual’s system.

(j) For purposes of ORS 657.176(9)(b)(A):

(A) “Recognized Drug or Alcohol rehabilitation program” means a program authorized and licensed under the provisions of OAR Chapter 415, or authorized and licensed under similar provisions in another state.

(B) “Documentation of participation in the program” means a signed statement by an authorized representative of the recognized program that the individual is engaged in a course of treatment.

(k) As used in ORS 657.176(13)(c)(B)(ii), an “Education or rehabilitation program acceptable to the employer” does not include a faith-based program objectionable to the employee.

(3) For purposes of ORS 657.176(9)(a)(A), a written employer policy is reasonable if:

(a) The policy prohibits the use, sale or possession of drugs or alcohol in the workplace and

(b) Except as otherwise expressly provided in this rule:

(A) The policy has been communicated to the individual in writing, at the time of hire or at least 30 days prior to testing; and

(B) The policy provides for drug or alcohol testing only when the employer has probable cause for requiring the individual to submit to the test, or the policy provides for random, blanket or periodic testing; and

(C) The employer follows its policy.

(4) Probable Cause for Testing. For purposes of ORS 657.176(9)(a)(A), an employer has probable cause upon which to require an employee to submit to a test for drugs and/or alcohol if

(a) The employer has, prior to the time of the test, observable, objective evidence that gives the employer a reasonable basis to suspect that the employee may be impaired or affected by drugs or alcohol in the workplace. Such evidence may include, but is not limited to, bizarre behavior in

the workplace, a substantial reduction in productivity, repeated tardiness or absences, or behavior which causes an on-the-job injury or causes substantial damage to property; or

(b) Such test is required by applicable state or federal law, or an applicable collective bargaining agreement that has not been declared invalid in final arbitration; or

(c) Such test is required pursuant to a reasonable written last chance agreement; and

(d) The employer has a reasonable written drug and/or alcohol policy and has published or provided the policy to its employees at the time of hire or at least 30 days prior to testing.

(5) Reasonable blanket, random or periodic testing. An employer has probable cause to require an employee to submit to a random, periodic or blanket test for drugs and/or alcohol, if:

(a) Such a test is required by applicable state or federal law, or an applicable collective bargaining agreement that has not been declared invalid in final arbitration; or

(b) Such a test is required pursuant to a reasonable written last chance agreement; or

(c) The employee, if affected or impaired by drugs or alcohol, could pose significant danger to himself or herself or others, could create a significant threat to public safety, could cause significant economic harm to the employer, or the nature of the job is inconsistent with the use of drugs and/or alcohol on or off the job (e.g. police officers, prosecutors, drug rehabilitation counselors).

(6) For purposes of ORS 657.176(9)(a)(A) and 657.176(13)(c), No employer policy is reasonable if the employee is required to pay for the cost of the test.

(7) For purposes of ORS 657.176(13)(c), a last chance agreement may be entered into on any basis acceptable to the parties to the agreement. A document signed by the parties that contains the terms of continued employment shall constitute evidence of such agreement.

(a) For purposes of ORS 657.176(13)(c), a last chance agreement shall be considered reasonable if it contains only fair conditions. Fair conditions include, but are not limited to, agreeing to remain drug or alcohol free; participating in a rehabilitation program; participating in an employee assistance program, or other similar program; submitting to random or periodic drug or alcohol testing to demonstrate that the employee remains drug or alcohol free.

(b) A term requiring an employee to pay for any of the cost of participation in a rehabilitation program is fair only if the cost is reasonable in consideration of the employee’s ability to pay.

(c) A term requiring an employee to pay for any of the cost of a drug or alcohol test is not fair.

(8) Pre-employment Testing:

(a) A requirement that job candidates submit to a pre-employment drug or alcohol test does not make the work unsuitable, for purposes of ORS 657.176(2) and ORS 657.190.

(b) If, after being referred by the Employment Department, a claimant does not apply for otherwise suitable work because the employer requires a pre-employment drug or alcohol test, the claimant has failed to apply for suitable work without good cause, unless the claimant is required to pay for costs associated with the drug or alcohol test.

(c) If a claimant does not accept an offer of otherwise suitable work because the employer requires pre-employment drug or alcohol testing, the claimant has failed without good cause to accept an offer of suitable work, unless the claimant is required to pay for the costs associated with the test.

(d) No drug or alcohol test administered after, or the results of which are received after, the individual begins work shall be considered a pre-employment test.

(e) No job offer made contingent upon passing a drug or alcohol test shall be considered a definite offer of work pursuant to ORS 657.176.

(9) Discharge or Suspension:

(a) An employee who is discharged or suspended as a result of being under the influence of drugs or alcohol on the job has committed a disqualifying act, unless in the case of drugs, the employee can show that the test results did not result from unlawful drug use.

(b) If an employee is discharged or suspended for violating a reasonable written employer policy governing the use, sale, possession or effects of drugs or alcohol in the workplace, then the employee has committed a disqualifying act, unless in the case of drugs, the employee can show that the violation did not result from unlawful drug use.

(10) Procedures for testing. For purposes of ORS 657.176(9)(a) and 657.176(10), in order to determine whether an individual fails a test for drugs or alcohol; is under the influence of drugs or alcohol; or tests positive for drugs or alcohol, the testing procedures must comply with the following:

ADMINISTRATIVE RULES

(a) In the case of a drug test, an initial test for drugs must be confirmed by a second test of a different type from a clinical laboratory licensed in the applicable jurisdiction.

(b) All tests must be administered by a licensed clinical laboratory, or by a licensed registered laboratory pursuant to ORS Chapter 438 or, in the case of a test performed in another state, the test must have been conducted by a laboratory meeting the licensing requirements of the applicable jurisdiction.

(c) If the results of a test are disputed, the employer must be able to show that the results of the test(s) upon which the employer relied related to tests conducted on the sample(s) from the individual by demonstrating that the individual signed a "chain of custody form" at the time the specimen was provided, and the testing laboratory signed the "chain of custody form" certifying that the sample was received intact.

(d) In the case of an alcohol test, the test must comply with ORS 659.840 and 659A.300.

(1) If the employer discharges or suspends an employee because of use, sale, possession or effects of drugs or alcohol in the workplace and the employer has no established policy regarding the use, sale, possession or effects of drugs or alcohol in the workplace, the provisions of OAR 471-030-0038 apply.

(2) If the employer discharges or suspends an employee because the individual failed a drug or alcohol test, but the employer does not specify the level at which an individual fails such test, the provisions of OAR 471-030-0038 apply.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.176, Ch. 792 OL 2003 (SB 916)
Hist.: ED 17-2003, f. 12-31-03, cert. ef. 1-4-04

Adm. Order No.: ED 18-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-4-04

Notice Publication Date: 11-1-03

Rules Amended: 471-060-0005

Subject: The Employment Department, Office of Administrative Hearings, is proposing to amend the "Request for Change of Hearing Officer" rule to clarify that the term "hearing officer" is being replaced with the term "administrative law judge" to reflect the official change that occurred due to the passage of HB 2526. This rule revision will also change the title of the rule from "Request for Change of Hearing Officer" to "Request for Change of Administrative Law Judge."

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-060-0005

Request for Change of Administrative Law Judge

(1) The purpose of this rule is to establish uniform procedures for the change of assignment of administrative law judges.

(2) The words and terms used in OAR 471-060-0005 have the following meanings:

(a) An administrative law judge is "assigned" when a written notice is sent to a party or agency naming the administrative law judge to preside over a contested case, or the date a party or agency has actual notice of the assignment, whichever is earlier.

(b) "Good cause" is any reason why an administrative law judge's impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

(3) Every party and agency in a contested case is entitled to request a change of administrative law judge. The first request of that party or agency shall be automatically granted. If that party or agency makes a subsequent request, it must show good cause why the administrative law judge should not preside over the hearing. The Chief administrative law judge or designee shall decide all requests.

(4) Notwithstanding section (3), no request shall be granted if a party or agency had a reasonable opportunity to request a change of administrative law judge but did not do so. "Reasonable opportunity" is determined under the totality of circumstances. All requests must be in writing and sent or delivered to the Chief Administrative Law Judge or designee at the mailing address, telephone number, or electronic mail address indicated in the notice of assignment of administrative law judge. Requests may be sent by mail, facsimile transmission, or electronic mail.

(5) The Chief Administrative Law Judge may exempt an agency or a class of cases from this section. All requests must be in writing.

(6) For all contested cases pending on January 1, 2000, the Chief Administrative Law Judge shall not assign or change assignments of administrative law judges unless the agency on whose behalf the hearing is conducted requests assignment of an administrative law judge from the Office of Administrative Hearings to continue the conduct and conclude the proceedings of a pending case.

Stat. Auth.: ORS 657.610 & Ch. 849, Sec. 11, OL 1999 (HB 2525)
Stats. Implemented: Ch. 849, Sec. 11, OL 1999 (HB 2525)
Hist.: ED 8-1999(Temp), f. 12-29-99, cert. ef. 1-1-00 thru 6-28-00; ED 3-2000, f. 6-23-00, cert. ef. 6-25-00; ED 2-2001, f. 1-26-01, cert. ef. 1-28-01; ED 18-2003, f. 12-31-03, cert. ef. 1-4-04

Employment Department, Child Care Division Chapter 414

Adm. Order No.: CCD 5-2003(Temp)

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-28-03 thru 6-25-04

Notice Publication Date:

Rules Adopted: 414-050-0010

Subject: The Employment Department is proposing to adopt this rule as a result of the passage of HB 2783 (Chapter 610, Oregon Laws 2003).

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-050-0010

Social Security Numbers

(1) The Child Care Division (CCD) will not issue or renew a registration, certification or enrollment unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to agency and is in the record.

(2) If an applicant has not been issued a social security number by the United States Social Security Administration, the CCD will accept a written statement from the applicant to fulfill the requirements of section (1). The applicant may submit the written statement on the "CCD Statement of No Social Security Number" form. Any written statement submitted must:

(a) Be signed by the applicant;

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

(c) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6250.

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

Statute implemented: ORS 25.785

Hist. CCD 5-2003(Temp), f. 12-23-03, cert. ef. 12-28-03 thru 6-25-04

Adm. Order No.: CCD 6-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Amended: 414-150-0055, 414-150-0080, 414-150-0120, 414-300-0000, 414-300-0005, 414-350-0010, 414-500-0030

Subject: The Employment Department, Child Care Division, is updating rules in OAR Chapter 414 to comply with changes to ORS Chapter 657A made by the legislature in HB 2191 (Chapter 293, Oregon Laws 2003).

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-150-0055

Definitions

(1) "Block Grant" means federal Child Care and Development Block Grant.

(2) "Block Grant Plan" means the Oregon Plan approved by the Department of Health and Human Services for child care and related programs funded by the Block Grant.

(3) "CCR&R" means Child Care Resource and Referral Agency.

(4) "Administrator" means the Administrator of the Child Care Division of the Employment Department.

(5) "CCCCF" means the County Commission for Children and Families.

(6) "Department" means the Employment Department of the State of Oregon.

ADMINISTRATIVE RULES

(7) "Parent" means parent, custodian or guardian who exercises care and custody of a child.

(8) "Program" means community or school-based teen parent education program, or licensed women-specific alcohol and drug treatment program.

(9) "Provider" means a person who is responsible for direct child care, supervision of children, and guidance of children in an approved child care setting.

(10) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) "Teen Parent" means a parenting or pregnant adolescent who is attending high school or participating in an approved high school completion program.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.010

Hist.: HR 7-1992(Temp), f. 2-27-92, cert. ef. 3-1-92; HR 26-1992, f. & cert. ef. 8-27-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 410-100-0055; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-150-0080

Eligibility for Contracted Services

(1) To be eligible for Contracted Child Care Services the following standards shall apply:

(a) The child receiving services must be under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age;

(b) Parental income must be below 75 percent of the state median income. Under the Block Grant, median income will be based on information reported in the Federal Register, Department of Health and Human Services;

(c) The child being placed for services is residing with a parent or parents who are either employed, attending job training, or participating in an approved educational program; or participating in an alcohol/drug treatment program;

(d) A parent making application for assistance must be a current resident of Oregon.

(2) The determination of income shall be based on a review of all parental income for the preceding 12 months prior to application for child care service.

(3) Review and calculation of income for teen parent(s) shall be limited to the teen parent(s) income only and not include income received by other members of the same household.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.010

Hist.: HR 7-1992(Temp), f. 2-27-92, cert. ef. 3-1-92; HR 26-1992, f. & cert. ef. 8-27-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 410-100-0080; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-150-0120

Service Standards

(1) Prior to accepting a child for care under these rules, the program shall sign a contract with the Department's Child Care Division. The contract shall include, but is not limited to, the following provisions:

(a) Term of the contract;

(b) Description of services;

(c) Facility and service standards;

(d) Program responsibilities;

(e) Payment for services; and

(f) Compliance with appropriate state and federal regulations.

(2) A program or a provider certified by Child Care Division (CCD) for operation of a child care center shall be in compliance with the standards defined in OAR 414-300-0000 through 414-300-0410.

(3) A program or a provider certified by CCD for operation of a certified family child care home shall be in compliance with the standards defined in OAR 414-350-0000 through 414-350-0400.

(4) A registered family child care provider shall be registered with CCD and meet requirements of OAR 414-205-0000 through 414-205-0170.

(5) If a program or a provider is operating a child care facility that is specifically excluded by Oregon law from state certification requirements under ORS 657A.250-657A.290, the standards for service shall be defined by the Department's Child Care Division in the agreement. The CCD may require information regarding the status of certification. The Department will require a criminal record check of all providers and caregivers through the Oregon State Police Law Enforcement Data System per ORS 181.537.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.010

Hist.: HR 7-1992(Temp), f. 2-27-92, cert. ef. 3-1-92; HR 26-1992, f. & cert. ef. 8-27-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 410-100-0120; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0000

Applicability of Rules

(1) OAR 414-300-0000 through 414-300-0410 set forth the Child Care Division's requirements for inspecting and certifying those child care facilities subject to Oregon laws governing child care facilities, ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460 and 657A.990, that:

(a) Serve thirteen or more children; or

(b) Serve twelve or fewer children and are located in a building constructed as other than a single-family dwelling.

(2) These rules do not apply to child care facilities specifically excluded by law. Excluded facilities are those which:

(a) Are primarily educational and provide care to children 36 months old or older but not yet attending kindergarten for less than four hours a day;

(b) Are primarily supervised, child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time children are involved in training;

(c) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group. This exclusion applies only to the time engaged in the group athletic or social activities and if the children can come and go as they please.

(d) Are operated by a school district, political subdivision of this state, or a government agency;

(e) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(f) Operate as a parent cooperative for no more than four hours a day; or

(g) Provide care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity.

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or noncompliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of centers.

Stat. Authority: ORS 657A

Stats. Implemented: ORS 657A.

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0600; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0005

Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0410, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Certification" means the certification that is issued by CCD to a child care center pursuant to ORS 657A.280.

(6) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

ADMINISTRATIVE RULES

(7) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(9) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(10) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(11) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(12) "Comparable group care program" means a program which has the following elements:

- (a) Staff are supervised by knowledgeable professionals;
- (b) Training of staff is provided or required annually;
- (c) Group size is similar to a certified child care facility;
- (d) Curriculum is age appropriate; and
- (e) The program is not providing uncertified drop-in care.

(13) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(14) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(15) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(16) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(17) "Enrollment" means all children registered to attend the center.

(18) "Group" means a specific number of children assigned to specific staff.

(19) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(20) "Head Teacher" means the person, or persons, who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(21) "Infant" means a child who is at least six weeks of age but is not yet walking alone.

(22) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(23) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(24) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(25) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(26) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(27) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the

operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(28) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

(29) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and
- (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(30) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(31) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(32) "Professional Development Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(33) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(34) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(35) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(36) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(37) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(38) "Serious complaint" means a complaint filed against:

- (a) A certified child care center by a person who has alleged that:
 - (A) Children are in imminent danger;
 - (B) There are more children in care than allowed by certified capacity;

- (c) Corporal punishment is being used;

- (d) Children are not being supervised;

- (e) Multiple or serious fire, health or safety hazards are present in the center;

- (f) Extreme unsanitary conditions are present in the center; or

- (g) Adults are in the center who are not enrolled in the Criminal History Registry; or

- (h) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(39) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(40) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(41) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(42) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(43) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(44) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing

ADMINISTRATIVE RULES

activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(45) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(46) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(47) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(48) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-350-0010

Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0400, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Certification" means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(6) "Certified Family Child Care Home" or "Home" means a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 12 children at any one time.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(9) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(10) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(11) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(12) "Enrollment" means all children registered to attend the certified family child care home.

(13) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(14) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(15) "Night Care" means care given to children who sleep at the home for all or part of the night.

(16) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(17) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(18) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(19) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(20) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(21) "Pre-school Age Child" means a child 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(22) "Professional Development Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(23) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(24) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(25) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(26) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(27) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by certified capacity;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Criminal History Registry.

(28) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(29) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(30) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

ADMINISTRATIVE RULES

(31) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(32) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: Ch. 743, OL 1999 (HB 2241)

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

414-500-0030

Administrative Requirements for Resource and Referral Agencies

(1) Any R & R or Resource & Referral Network contracting -to provide child care resource and referral services under ORS 657A.010 for the administration of ORS 657A.030 and 657A.250 through 657A.530 shall:

(a) Be a "Resource & Referral Agency" or "Resource & Referral Network" as defined in OAR 414-500-0020.

(2) Each R & R shall:

(a) Demonstrate community support and endorsement;

(b) Demonstrate a commitment to provide, strengthen, and promote the financial support of R & R core services and the long-term financial stability of R & R programs;

(c) Demonstrate collaboration with local child care providers, provider groups, parents, social service and government agencies, employers, and institutions of public education in the development and operation of the R & R;

(d) Have an advisory group that represents diverse segments of the child care community. The R & R shall ensure input into R & R operations from parents, providers, employers, and community representatives;

(e) Have staff with at least two years of post-secondary education, experience, and/or training, commensurate with job responsibilities, in the following:

(A) Early childhood education, human services, counseling, or a related field of study;

(B) Child care or child development;

(C) Parent education;

(D) Provider support; or

(E) Program management.

(f) Directly provide the core services;

(g) Not discriminate against any family on the basis of race, color, or ethnicity; religion; national origin; citizenship; sex; age; physical or mental disability; marital status, or because of a child's need for special care;

(h) Make services accessible to families, with particular sensitivity to ethnic and cultural minorities, languages spoken, families with special needs, and the economically disadvantaged;

(i) Provide services to all types of child care providers, except those under Child Care Division disciplinary action;

(j) Match funds awarded by the Child Care Division, or its agent or designee, as provided in ORS 657A.180(3) and 657A.180(4). Matching funds may be used to directly provide R & R services, or enhance R & R services;

(k) Publicize its services;

(l) Maintain fiscal records consistent with accepted accounting practices;

(m) Collect financial statistics on a regular basis and make financial reports at times and in the form prescribed by the Child Care Division, or its agent or designee;

(n) Maintain program records, including statistical records, and provide program records to the Child Care Division, or its agent or designee, at times and in the form prescribed by the Child Care Division, or its agent or designee;

(o) Cooperate in a program and facility review (including meetings with consumers, review of records, review of policy and procedures, review of staffing and staff qualifications, and meetings with any staff directly or indirectly involved in the provision of services) at any reasonable time by the Child Care Division, or its agent or designee;

(p) Retain all records and other documents related to the provision of resource and referral services for at least three years, unless otherwise specified in a contractual agreement with the Child Care Division, or its agent or designee; and

(q) Have a complaint policy, regarding instances in which the health and/or safety of a child is at risk, that is approved by the Child Care Division, or its agent or designee.

(3) Satisfactory performance by an R & R and/or the Resource & Network shall be a condition for the renewal of a contract.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.120 & 657A.130

Hist.: CC 1-1990, f. 3-12-90, cert. ef. 3-15-90; CC 1-1993(Temp), f. & cert. ef. 7-14-93; CC 2-1993, f. & cert. ef. 12-22-93; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 414-010-0030; CCD 7-2001(Temp), f. 12-19-01, cert. ef. 12-23-01 thru 6-21-02; CCD 1-2002, f. 6-20-02, cert. ef. 6-21-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03

Adm. Order No.: CCD 7-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Amended: 414-205-0000, 414-350-0010

Subject: The Employment Department, Child Care Division, is updating rules in OAR Chapter 414 to comply with changes to ORS Chapter 657A made by the legislature in HB 534 (Chapter 366, Oregon Laws 2003).

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-205-0000

Purpose

(1) Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the Child Care Division's minimum requirements for registering family child care providers. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own homes.

(2) Registration is required for persons who provide child care:

(a) On other than an occasional basis; and

(b) To more than three children from more than one family at any one time, other than the person's own children.

(3) These rules do not apply to care provided:

(a) In the home of the child;

(b) To three or fewer children, not including the provider's own children;

(c) To children from one family, not including the provider's own children;

(d) On an occasional basis by a person not ordinarily engaged in providing child care;

(e) By the child's parent, guardian, or person acting in place of a parent;

(f) By a person related to the child care children by blood, marriage, or adoption; or

(g) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(4) Any family child care provider exempt from registration may apply for registration.

(5) These rules apply only during the hours the provider is conducting the child care business.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.330

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03

414-350-0010

Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0400, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Certification" means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

ADMINISTRATIVE RULES

(6) "Certified Family Child Care Home" or "Home" means: (a) a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 12 children at any one time; or (b) a group child care home as used in ORS Chapter 657A.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; [or]

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(9) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(10) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(11) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(12) "Enrollment" means all children registered to attend the certified family child care home.

(13) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(14) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(15) "Night Care" means care given to children who sleep at the home for all or part of the night.

(16) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(17) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(18) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(19) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(20) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(21) "Pre-school Age Child" means a child 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(22) "Professional Development Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(23) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(24) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(25) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(26) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(27) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by certified capacity;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Criminal History Registry.

(28) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(29) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(30) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(31) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(32) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: Ch. 743, OL 1999 (HB 2241)

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03

Adm. Order No.: CCD 8-2003

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-28-03

Notice Publication Date: 11-1-03

Rules Amended: 414-300-0010, 414-300-0180, 414-300-0190, 414-300-0200, 414-300-0210, 414-300-0280, 414-300-0360, 414-350-0020, 414-350-0210, 414-350-0235

Subject: The Employment Department, Child Care Division, is updating rules in OAR Chapter 414 to comply with changes to ORS Chapter 700 made by the legislature in HB 2325 (Chapter 547, Oregon Laws 2003).

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-300-0010

Application for a Child Care Certificate

(1) Unless exempted by Oregon laws governing child care facilities, no person or organization shall operate a child care center without a valid certification issued by the Child Care Division (CCD).

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

(a) For the initial certification;

ADMINISTRATIVE RULES

- (b) For the annual renewal of certification; and
- (c) Whenever there is a change of owner, operator or location.
- (4) The applicant shall complete and submit an application to CCD at

least:

- (a) 45 days before the planned opening date of a new center; and
- (b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for certification shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of owner/operator, the reopening of a center after a lapse in certification, or a change of location (except when a facility is forced to move due to circumstances beyond the control of the operator), the fee is \$100 plus \$2 for each certified space (e.g., the fee for a child care center certified to care for 30 children is \$60 + \$100 = \$160).

(b) For a renewal application, the fee is \$2 for each certified space.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant must submit a new application for certification.

(7) A floor plan shall be submitted with the initial application and/or when a facility is being constructed or remodeled. The floor plan shall show dimensions of all rooms to be used (length and width), the planned use of each room, the placement and number of toilets, handwashing sinks, and diaper changing tables, and the location of the fixtures and plumbing in the kitchen. Similar plans shall be submitted to the environmental health specialist, the fire marshal and the buildings department prior to initial construction or remodel.

(8) If the facility is located within or attached to a building used for purposes other than child care, the floor plan shall describe the other activities which are carried out in adjoining rooms or buildings.

(9) If the applicant is a firm, association, corporation, public agency, or governmental entity, the application shall be signed by the chief executive officer or a person designated in writing to have the authority to sign for the applicant. If the applicant is a partnership, the application shall be signed by each partner.

(10) A management list shall be submitted with the application and updated annually. The list must specify who is responsible for each of the following:

- (a) Financial management;
- (b) Maintaining records;
- (c) Budgeting;
- (d) Policy Development;
- (e) Staff management, orientation and training;
- (f) Maintenance of building and grounds;
- (g) Meal planning and preparation;
- (h) Transportation of children, if provided; and
- (i) Ensuring the appropriateness of program activities according to age and development of the children.

(11) An operator shall provide verification to CCD that the center meets all applicable building codes and zoning requirements that apply to child care facilities:

- (a) Before the initial certification is issued; and
- (b) Whenever the facility is remodeled.

(12) The center shall be approved by an environmental health specialist registered under ORS chapter 700, or an authorized representative of the Health Division, and by a state or local fire marshal, before a certificate is issued by CCD.

(a) If structural, emergency or permit problems occur, CCD may request that the operator have the center inspected by the appropriate authority; and

(b) The operator is responsible for payment of any applicable fees for fire safety and sanitation inspections.

(13) Upon receipt of a completed application, a representative of CCD shall evaluate the center and all aspects of the proposed operation to determine if the center meets certification requirements (OAR 414-300-0000 through 414-300-0410).

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0610; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0180

Sanitation

(1) Water Supply:

(a) The center's water supply shall be continuous in quantity and from a water supply system approved by the Health Division.

(b) There shall be safe drinking water available to children that is supplied in a sanitary manner. Drinking water shall not be obtained from bathroom sinks or diaper changing sinks.

(2) Heat and Ventilation:

(a) The center shall be ventilated, by natural or mechanical means, and shall be free of excessive heat, condensation, and obnoxious odors.

(b) Room temperature shall be at least 68° F. (20 C.) and not so warm as to be dangerous or unhealthy in the center when children are present.

(c) After painting or laying carpet, the building must be aired out completely for at least 24 hours with good ventilation before children are allowed to return.

(3) Insect and Rodent Control:

(a) The center shall be in such condition as to prevent the infestation of rodents and insects.

(b) Doors and windows used for ventilation shall be equipped with fine-meshed screens.

(c) Automatic insecticide dispensers, vaporizers, or fumigants shall not be used.

(4) Maintenance:

(a) The building, toys, equipment, and furniture shall be maintained in a clean and sanitary condition:

(A) Kitchen and toilet rooms shall be cleaned when soiled and at least daily;

(B) The isolation area shall be thoroughly cleaned after each use and all bedding laundered before it is used again;

(C) Door knobs and cabinet pulls in toilet rooms and diaper changing areas shall be sanitized daily;

(D) All clean linen shall be stored in a sanitary manner;

(E) Soiled bed linen and clothing shall not be stored in food preparation or food storage areas, and shall be inaccessible to children;

(F) Floors, walls, ceilings, and fixtures of all rooms shall be kept clean and in good repair;

(G) All food storage areas shall be kept clean and free of food particles, dust, dirt, and other materials;

(H) Cribs, mats, and cots shall be sanitized with a sanitizing solution at least once a week and upon change of occupant. If visibly soiled, items must be cleaned prior to sanitizing.

(I) Bedding shall be cleaned when soiled, upon change of occupant and at least once a week;

(J) Water tables and toys used in water tables shall be emptied and sanitized daily;

(K) When a chemical, such as chlorine, is used for sanitizing, a test kit that measures the parts per million concentration of the solution shall be used to ensure the proper concentration; and

(L) Cloths, both single use and multiple use, used for wiping food spills on utensils and food-contact surfaces shall be kept clean and used for no other purpose. Cloths that are reused shall be stored in a sanitizing solution between uses.

(b) The center shall be kept hazard-free, in good repair, and free of litter or rubbish and unused or inoperable equipment and utensils.

(5) Infant and Toddler Care:

(a) The following shall be sanitized immediately after each use. If visibly soiled, items must be cleaned prior to sanitizing:

(A) A bathtub or other receptacle used for bathing a child;

(B) A diaper-changing table;

(C) High chairs, tables and chairs;

(D) Toys that infants and toddlers put in the mouth; and

(E) Toilet training seat inserts.

(b) Pacifiers must be labeled, stored individually and sanitized after contamination. The health department must approve methods of sanitation.

(c) A sanitizing solution shall be kept in each diaper changing area ready for immediate use. This solution need not be stored in a locked cabinet but must be out of children's reach.

(6) Hand washing:

(a) Staff and children shall wash their hands with soap and warm running water after using the toilet or wiping the nose, and before and after eating.

ADMINISTRATIVE RULES

(b) Staff shall wash their hands with soap and warm running water before and after changing a diaper, before and after feeding a child or handling food and after assisting a child with toileting or wiping the nose.

(c) Infants' and children's hands shall be washed with soap and warm running water after diaper changing.

(d) Commercial products labeled "hand sanitizers" shall not replace hand washing. If hand sanitizers are present in the center, they shall be kept under child-proof lock and shall not be used by children.

(e) When hand washing is not possible, e.g. on field trips and on the playground, moist towelettes shall be used.

(7) Waste Disposal:

(a) All sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the requirements of the Department of Environmental Quality.

(b) All garbage, solid waste, and refuse shall be disposed of at least once a week.

(c) All garbage shall be kept in watertight, non-absorbent, and easily washable containers with close-fitting lids.

(d) Diaper disposal containers shall be approved by the environmental health specialist.

(e) All garbage storage areas and garbage containers shall be kept clean.

(f) All rubbish and garbage storage shall be inaccessible to children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0644; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0190

Toilet Facilities

(1) Toilets:

(a) Toilet rooms shall have at least one flush toilet for each 15 children in the center 36 months old or older.

(b) Urinals may be substituted for not more than one-half the required number of toilets, as long as there is at least one toilet in each toilet room and at least two toilets in the center. Facilities built after July 15, 2001, specifically as child care centers shall not substitute urinals for the required number of toilets.

(c) Toilet facilities shall provide privacy for school age children.

(2) Hand washing Sinks:

(a) There shall be at least one hand washing sink with mixing faucets for every two toilets. Centers with certification in effect on July 15, 2001, shall comply with the requirement for mixing faucets when toilet facilities are remodeled.

(b) A sink used for hand washing, bathing, or diaper-changing shall not be used in any way for preparation of food or drinks, or for dish washing.

(c) Hot and cold running water, as well as soap and paper towels dispensed in a sanitary manner, shall be provided at each hand washing sink. Other hand drying options must be approved by the environmental health specialist.

(d) Self-closing metered faucets shall be designed to provide water flow for at least 15 seconds without the need to reactivate the faucet. Centers with certification in effect on July 15, 2001, shall comply with the water flow requirement for self-closing metered faucets when toilet facilities are remodeled.

(e) Drinking fountains shall not be installed at sinks. If installed at sinks, the fountains shall not be used as a source of drinking water.

(3) If toilets or hand washing sinks are adult size, easily-cleanable steps or blocks shall be provided so that preschool age children can use the toilets and sinks without adult assistance.

(4) Bathrooms shall have smooth, washable, easily-cleanable walls and floors.

(5) Infants and Toddlers — In a center serving children under 36 months old, there shall be:

(a) At least one flush toilet in or adjacent to each older toddler area;

(b) One toilet with training seat, or child-size toilet, for every ten older toddlers. Potty chairs are prohibited;

(c) At least one diaper-changing table in or adjacent to each activity and sleeping room. Each table shall have a surface that is non-absorbent and easily cleaned. The diaper-changing policy shall be posted above each table;

(d) A hand-washing sink in each diaper changing area, except that centers with certification in effect on July 15, 2001, shall comply with this requirement when the diaper changing area is remodeled; and

(e) A bathtub, bathinette, plastic basin, or similar size shallow sink available for bathing children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0645; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0200

Kitchens

(1) Kitchens shall have facilities for dish washing, storage, and preparation of food. The kitchen shall be separate from any child caring areas.

(2) If there is no kitchen in the center and if meals or snacks are not catered, the center shall observe the requirements in OAR 414-300-0280(8).

(3) The walls, floors, and floor coverings of all rooms in which food or drink is prepared or stored, or utensils are washed or stored, shall be smooth, washable, and easily cleanable.

(4) All equipment and utensils used for food service, including plastic ware and food-contact surfaces, shall be:

(a) Easily cleanable;

(b) Durable;

(c) Nontoxic;

(d) Nonabsorbent; and

(e) Maintained in a clean and sanitary condition.

(5) All equipment used for food preparation shall be installed and maintained in a manner providing ease of cleaning beneath, between, and behind each unit.

(6) A center shall have a:

(a) Mechanical dishwasher that meets the requirements in the Health Division's administrative rules, OAR 333-154-0030; or

(b) Compartmentalized sink that meets the requirements in the Health Division's administrative rules, OAR 333-154-0020.

(c) Centers with a maximum capacity of 19 children may use a light commercial dishwasher approved by the National Sanitation Foundation.

(7) There shall be separate sinks in the kitchen designated by the environmental health specialist for hand washing, for food preparation activities, and for dishwashing activities.

(a) The sink designated for hand washing shall be equipped with soap and paper towels dispensed in a sanitary manner and posted with a hand washing sign.

(b) In centers in which there is not a sink provided for food preparation, a sink used for dishwashing may be used as long as dishwashing activities do not interfere with sanitary food preparation, and the sink is sanitized before being used for food preparation.

(c) Sinks in the kitchen shall be used exclusively for food service activities.

(d) Centers newly constructed or remodeled after July 15, 2001, shall meet the requirements for hand washing sinks established by State Building Code, as defined in ORS chapter 455.

(8) Children shall not be allowed in the kitchen except for a supervised learning activity.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0646; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0210

Furniture

(1) Furniture shall:

(a) Be durable;

(b) Have cleanable or non-absorbent surfaces;

(c) Be safely constructed, with no sharp, rough, loose, or pointed edges; and

(d) Be in good repair.

(2) Tables and seating shall be scaled to the height and size of a child.

(3) There shall be a safe, washable cot or rest mat for each toddler and preschool age child in the center at nap time and for each school-age child who wants to rest.

(4) Each mat used for napping shall be:

(a) Covered with a waterproof cover; and

(b) At least one inch thick.

(5) Mats or cots shall be placed at least two feet apart if children are placed head to toe; or three feet apart otherwise. They shall be arranged in a manner that allows for a direct, unobstructed passage to each child.

(6) Each child who is resting shall have individual bedding consisting of at least a sheet or blanket.

(7) Mats, cots and bed linen shall be properly stored, as recommended by the environmental health specialist.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

ADMINISTRATIVE RULES

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0648; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0280

Meals and Snacks

(1) Meals and snacks provided to children shall meet the following requirements:

(a) Food services hours may be flexible but there shall be no more than 3-1/2 hours between meals and snacks in any center providing care for the same children 3 1/2 or more consecutive hours;

(b) In a center open morning through afternoon, lunch and morning and afternoon snacks shall be served to the children in care. If breakfast is served in the center to all children, a midmorning snack is not required, as long as there is no more than 3 1/2 hours between meals;

(c) School age children arriving after school shall be served a snack; and

(d) When the planned attendance is prior to 7 a.m. or after 6:30 p.m., a child shall be offered a complete meal if it is not provided or arranged for by the parent(s).

(2) Meals for children shall be:

(a) Prepared on-site;

(b) Catered; or

(c) Provided by the parent(s).

(3) During the service and eating of meals and snacks, the appropriate number of staff to meet staff/child ratios shall be engaged with the children in food-related activities.

(4) Proper hand washing, as specified in OAR 414-300-0180(6) shall be practiced prior to and after eating meals or snacks.

(5) When parent(s) provide food for the meal:

(a) Food shall be brought on a daily basis and be ready to eat;

(b) All food and beverage containers shall be labeled with the child's name;

(c) The center shall provide at least one serving of milk to each child at meals and shall provide morning and afternoon snacks;

(d) Each child's food shall be monitored daily to ensure that the food meets nutritional requirements as defined in OAR 414-300-0270;

(e) The center shall have sufficient food available to supplement any lunch that does not meet nutrition requirements as defined in OAR 414-300-0270;

(f) If parents bring food for all the children as snacks or for celebrations, the food shall be commercially prepared and served by the center in an approved manner; and

(g) There shall be a refrigerator on site to store foods needing refrigeration.

(6) Catered foods shall be:

(a) Prepared in a kitchen approved by the State Health Division or a county health department; and

(b) Delivered in a safe, sanitary manner with food maintained at the required temperature (OAR 414-300-0250).

(c) If meals are catered, the process of receiving, holding and serving food shall be approved by the environmental health specialist.

(7) To serve family style meals, where food is brought to the table in larger quantities and served to the plates from the table, a center must have a written plan, approved by the environmental health specialist and CCD, which includes at least the following elements:

(a) Provision for handwashing immediately prior to eating;

(b) Separate serving portions for each table;

(c) Serving utensils distinct from eating utensils;

(d) Table accommodations for group sizes no larger than those stated in OAR 414-300-0130, Table 3A or Table 3B, for that age group;

(e) Provision for serving mildly ill children so as to prevent the spread of the illness; and

(f) The discarding of any food brought to the table and not eaten.

(8) If there is no kitchen in the center and if meals or snacks are not catered:

(a) Only single service utensils shall be used;

(b) Either commercially-prepared, individually-packaged, single-serving foods shall be served or the serving of bulk food shall be approved by the environmental health specialist;

(c) Utensils that require washing shall not be used or stored on site;

(d) Food shall be stored in a space used only for food, beverages and single-service utensils; and

(e) If foods needing refrigeration are served, the center shall have a refrigerator.

(9) A center serving children under 12 months of age shall comply with the following requirements for those children:

(a) Each child shall be fed on his/her own feeding schedule;

(b) When formula is provided by the center, it shall be either the commercially prepared, iron-enriched, ready-to-feed type or shall be prepared from powder or concentrate and diluted according to manufacturers' instructions. When formula is prepared on site, it must be mixed in a kitchen approved by the environmental health specialist, and the program must have a written plan for mixing formula and sanitizing bottles and nipples. The plan must be approved in writing by the environmental health specialist;

(c) Formula, breast milk, and food provided by the parent(s) shall be clearly marked with the child's name and refrigerated if required;

(d) Whole milk, skim milk, 1%, and 2% milk shall not be served unless requested in writing by the child's parent(s) and with a medical provider's written permission.

(e) Any bottles used for feeding liquid must be sterilized at the center by boiling or must come from home labeled by the parent with the child's name. Nipples must be stored in a closed container after sterilizing;

(f) Solid foods fed to infants shall be selected from the food groups specified in OAR 414-300-0270(2):

(A) Solid foods shall not be fed to infants less than four months of age without parental consent;

(B) Solid food shall not be served directly from the container;

(C) Leftovers in the serving container shall be discarded; and

(D) Solid foods, with the exception of finger foods, shall be fed with a spoon.

(g) Honey or foods containing honey shall not be served to children under 12 months of age; and

(h) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.

(A) Infants up to six months of age shall be held while bottle fed.

(B) Bottles shall never be propped. The child or a staff person shall hold the bottle.

(C) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0666; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-300-0360

Night Care

(1) A center providing night care to children shall meet all the requirements for child care centers contained in OAR 414-000-0300 through 414-300-0410, except for 414-300-0150, 414-300-0290 through 414-300-0320, and 414-300-0340(2)(e). In addition, the center shall comply with the following requirements:

(a) Staffing:

(A) During the hours of night care, the required staff/child ratio shall be maintained in the center.

(B) There shall be at least two staff persons present and awake at all times.

(C) All sleeping and awake children shall be within sight and sound of staff at all times. Audio and/or video monitoring devices shall not substitute for sight and sound supervision.

(b) Safety:

(A) No one shall be allowed to enter except authorized persons including, but not limited to, the child's family, persons authorized by the parent(s), staff, CCD certification representatives, fire safety officials, and environmental health specialists.

(B) The center shall provide staff training for evacuating sleeping children in an emergency.

(C) There shall be emergency lighting in each room used by children.

(c) Activities:

(A) The center shall provide a program of activities for children according to their ages, interests, and abilities.

(B) There shall be quiet time activities, such as story-time, games, arts and crafts, and reading, for each child arriving before bedtime.

(C) There shall be toys and equipment available to meet the needs of children in night care.

(D) There shall be an activity area away from sleeping children where the awake children may engage in activities.

(d) Sleeping Arrangements:

(A) Space shall be arranged so that children may go to sleep at various times, based on their age and need for rest.

(B) All sleeping rooms used by children shall have two usable exits. A sliding door or window that can be used to evacuate children may be considered a usable exit.

(C) Each child who spends the majority of his/her sleeping hours per night in night care shall have a bed and mattress, or another sleeping

ADMINISTRATIVE RULES

arrangement that provides adequate support to a child's body with a water-proof cover and of a size appropriate to the age of the child.

(i) Cribs shall comply with OAR 414-300-0215(1).

(ii) The upper level of bunk beds shall not be used for children under 10 years of age.

(iii) The upper level of bunk beds may be used for children 10 years or older if a bed rail and safety ladder are provided.

(D) Each child who does not spend the majority of his/her sleeping hours in night care shall have a crib, cot, or mat with bedding that complies with OAR 414-300-0210 and 414-300-0215.

(E) Children who attend the center for the evening hours, but do not spend the whole night, shall have an opportunity to sleep, if needed.

(F) No children shall share a bed.

(G) Each sleeping arrangement occupied by a child shall have sheets, pillows, pillowcases, and blankets.

(H) Bed linens shall be changed upon change of occupant and at least once a week.

(e) Personal Hygiene:

(A) Each child shall have an individual washcloth, towel, toothbrush, comb or brush, and sleepwear.

(B) Children staying the night shall have the opportunity to bathe and brush their teeth.

(i) There shall be at least one bathtub or shower for each 15 children. Bathtubs and showers shall be equipped to prevent slipping.

(ii) When bathing, showering, or brushing teeth, children shall be supervised by staff.

(iii) Privacy between the sexes shall be maintained for school age children.

(iv) Tubs or showers shall be cleaned after each use. If visibly soiled, tubs and showers must be cleaned prior to sanitizing.

(v) Glass shower doors or glass tub enclosures shall be constructed of safety glass.

(f) Meals and Snacks:

(A) Each child present at the time the evening meal is scheduled shall be served a meal.

(B) A nutritious nighttime snack (OAR 414-300-0270(4)) shall be available to all children in care.

(C) Each child present at the time breakfast is scheduled shall be served breakfast, unless the parent(s) specifies otherwise.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0680; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-350-0020

Application for a Child Care Certificate

(1) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certification issued by the Child Care Division (CCD).

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

(a) For the initial certification;

(b) For the annual renewal of certification; and

(c) Whenever there is a change of provider or location.

(4) The applicant shall complete and submit an application to CCD at least:

(a) 45 days before the planned opening date of the certified family child care home; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) The expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for certification shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of provider, the reopening of a facility after a lapse in certification, or a change of location, the fee is \$25 plus \$2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is \$24 + \$25 = \$49).

(b) For a renewal application, the fee is \$2 for each certified space.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the applica-

tion will be denied. If an application is denied, an applicant will be required to submit a new application for certification.

(7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.

(8) The applicant shall provide verification to CCD that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:

(a) Before the initial certification is issued; and

(b) Whenever the home is remodeled.

(9) The home shall be approved by an environmental health specialist registered under ORS Chapter 700 or an authorized representative of the Department of Human Services before a certification is issued by CCD.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a life safety survey as part of a business license or when CCD determines there is a need to do so.

(11) Upon receipt of a completed application, a representative of CCD shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0400) are met.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.270, 657A.280 & 657A.310

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0710; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-350-0210

Meals and Snacks

(1) The provider shall provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. USDA guidelines will be used to determine if meals and snacks are adequate and nutritious. Foods of minimal nutritional value (e.g., Jell-O, popcorn, desserts, potato chips) shall only be served occasionally and not replace nutritious foods.

(a) Every meal shall meet USDA guidelines and shall include at least one serving from each of the following food groups: fluid milk; breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese). Each meal shall include two servings of fruits or vegetables. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition.

(b) Snacks shall meet USDA guidelines and shall consist of food or beverage from at least two of the following food groups: fluid milk, breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese); vegetables and fruits. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition. A snack shall not consist of only two beverages.

(c) Nutrient concentrates and supplements (protein powders, liquid proteins, vitamins, minerals, and other nonfood substances) shall not be served to a child without a written statement of parental consent and written instructions from a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without written instructions from a registered dietician or medical practitioner and written parental consent.

(2) Meals and snacks provided to children shall meet the following requirements:

(a) In certified family child care homes open morning through afternoon, lunch and morning and afternoon snacks shall be served to the children in care. If breakfast is served to all children, a midmorning snack is not required;

(b) School-age children arriving after school shall be served a snack;

(c) When the planned attendance is prior to 7 a.m. or after 6:30 p.m., a child shall be offered a complete meal if it is not provided by the parent(s); and

(d) There shall be no more than 3-1/2 hours between meals and snacks.

(3) Meals and snacks for children shall be:

(a) Prepared by the provider;

(b) Prepared by the parent of the child; or

(c) Prepared from a source approved by the Department of Human Services.

(4) When the parent of a child provides food for the child's meal:

(a) The provider shall be responsible for at least one serving of milk or a milk product to each child at meals;

ADMINISTRATIVE RULES

(b) Each child's food shall be monitored daily by a caregiver to ensure that the food meets nutritional requirements as defined in section (1) of this rule; and

(c) The provider shall have sufficient food available to supplement any meal that does not meet nutritional requirements as defined in section (1) of this rule.

(5) Meals shall be served in a manner that supports safe and sanitary eating and allows socialization to occur.

(6) Nutrient concentrates and supplements shall not be served to a child without a written statement of consent from the parent and a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without a written statement of consent from the parent and a registered dietician or medical practitioner.

(7) To serve family style meals, where food is brought to the table in larger quantities and served to the plates from the table, a certified home must have a written plan, approved by the environmental health specialist and CCD, which includes at least the following elements:

(a) Provision for handwashing immediately prior to eating;

(b) Separate serving portions for each table, if more than one table is used;

(c) Serving utensils distinct from eating utensils;

(d) Provision for serving mildly ill children so as to prevent the spread of the illness;

(e) The discarding of any food brought to the table and not eaten; and

(f) Food brought to the table must be covered until a caregiver is seated with the children.

(8) A certified family child care home serving children under 12 months of age shall comply with the following requirements for those children:

(a) Each child shall be fed on his/her own feeding schedule.

(b) When formula is furnished by the provider, it shall be either the commercially prepared, iron-enriched, ready-to-feed type or shall be prepared from powder or concentrate and diluted according to manufacturers' instructions. When formula is prepared on site, the provider must have a written plan for mixing formula and sanitizing bottles and nipples. The plan must be approved in writing by the environmental health specialist.

(c) Formula, breast milk, and food provided by the parent shall be clearly marked with the child's name and refrigerated if required.

(d) No liquids, other than milk, formula, water, and 100 percent fruit juice, shall be served.

(e) Whole milk, skim milk, 1%, and 2% milk shall not be served unless requested in writing by the child's parent(s) and with a medical provider's written permission.

(f) Solid foods fed to infants shall be selected from the USDA Infant Food Chart.

(A) Solid foods shall not be fed to infants less than four months of age without parental consent.

(B) Solid food shall not be served directly from the container unless the child consumes the entire contents of the container or any remaining food in the container is discarded.

(C) If a portion of solid food from a container is placed in a clean, sanitized dish and served from the dish, any food remaining in the dish shall be discarded.

(D) Open containers of food, from which a portion has been removed, must immediately be refrigerated at 45 degrees F or less.

(E) Solid foods, with the exception of finger foods, shall be fed with a spoon.

(g) Honey or foods containing honey shall not be served; and

(h) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.

(A) Infants up to six months of age shall be held while bottle fed.

(B) Bottles shall never be propped. The child or a caregiver shall hold the bottle.

(C) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0762; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

414-350-0235

Infant and Toddler Furniture and Equipment

(1) Each infant shall have a crib, portable crib, or playpen with a clean, non-absorbent mattress that meets the following requirements:

(a) Each crib shall be of sturdy construction with vertical slats no more than 2 3/8" apart;

(b) Locks and latches on the dropside of the crib shall be safe and secure from accidental release or release by the infant inside the crib;

(c) Each mattress shall fit snugly; and

(d) Sleeping arrangements shall be appropriate to the cultural background of the infant, with individual bedding appropriate to the season.

(2) If infants and toddlers are in care there shall be:

(a) A bathtub, bathinette, plastic basin, or similar size shallow sink available for bathing children; and

(b) A diaper-changing area. The area shall be located so that hand-washing can occur immediately after diapering without contact with other surfaces or other children.

(3) The diaper-changing table or area shall comply with the requirements specified in OAR 414-350-0160(3)(a)(G).

(4) If high chairs are used, they shall have:

(a) A broad base to prevent tipping;

(b) A latch to keep a child from raising the tray; and

(c) Straps to prevent a child from sliding out.

(5) Cribs, portable cribs, playpens, and high chairs must meet US Consumer Product Safety Commission or equivalent standards.

(6) Car seats are to be used for transportation purposes only. Children who arrive at the home asleep in a car seat may remain in the car seat until they awake.

(7) The use of baby equipment shall not substitute for providing a variety of stimulating experiences.

(8) The use of infant walkers is prohibited.

(9) The use of potty chairs must be approved by the environmental health specialist and/or by CCD.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03

Landscape Contractors Board Chapter 808

Adm. Order No.: LCB 8-2003(Temp)

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 1-1-04 thru 6-27-04

Notice Publication Date:

Rules Adopted: 808-004-0210, 808-008-0050, 808-008-0290, 808-008-0510, 808-008-0520

Rules Amended: 808-002-0540, 808-008-0020, 808-008-0030, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0280, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500

Rules Suspended: 808-008-0280

Subject: The above listed rules are adopted, amended or suspended to implement HB 2279 (chapter 598, Oregon Laws 2003).

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-002-0540

Last-Known Address of Record

(1) "Last-known address of record" for a landscape contractor, a landscaping business or for a claimant, as used in ORS 671.603(2), means the most recent of:

(a) The mailing address provided by the landscape contractor, landscaping business or claimant in writing to the agency, designated by the landscape contractor, landscaping business or claimant as the landscape contractor's, landscaping business' or claimant's mailing address; or

(b) The forwarding address for the landscape contractor, landscaping business or claimant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: ORS 671.603

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04

808-004-0210

Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

ADMINISTRATIVE RULES

(3) A party must notify the agency in writing within 10 days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.603
Hist.: LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0020

Applicability of Rules; Application of chapter 598, Oregon Laws 2003

(1) The rules in this division shall apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 808-004-0590;

(b) The parties to the arbitration agree that the Landscape Contractors Board may arbitrate a landscape dispute and the agency accepts the dispute for arbitration under ORS 671.703;

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Landscape Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 671.703; or

(d) Arbitration by the Landscape Contractors Board is ordered by a court in accordance with section 6 or 7, chapter 598, Oregon Laws 2003.

(2) The amendments to the rules in division 8 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for arbitration:

(a) On or after January 1, 2004; and

(b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

(3) Except as otherwise provided in the rules in division 8 of this chapter, an agreement to arbitrate shall be governed by sections 1 to 30, chapter 598, Oregon laws 2003, subject to:

(a) Section 3, chapter 598, Oregon Laws 2003, which relates to the effect of the date of an agreement to arbitrate on the application of sections 1 to 30, chapter 598, Oregon Laws 2003 to the agreement;

(b) Section 29, chapter 598, Oregon Laws 2003, which relates to consideration of the need to promote uniformity of law in construing an arbitration agreement;

(c) Section 31, chapter 598, Oregon Laws 2003, which relates to a proceeding commenced or a right accrued before January 1 2004.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0030

Incorporation of Office of Administrative Hearings Rules

(1) The following rules related to the contested case hearings conducted by administrative law judges assigned to the Office of Administrative Hearings are incorporated into these rules by this reference and apply to arbitrations conducted under the rules in this division:

(a) OAR 137-003-0590 (Qualified interpreters); and

(b) OAR 137-003-0605 (Telephone testimony).

(2) In interpreting rules incorporated under section (1) of this rule:

(a) "Hearing" in the incorporated rule shall be given the same meaning as "arbitration" in these rules; and

(b) "Administrative law judges" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

Stat. Auth.: ORS 670.310, & 671.670
Stats. Implemented: ORS 183, 671
Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0050

Application for Judicial Relief

An application to the court for judicial relief under the rules in division 8 of this chapter or under section 1 to 30, chapter 598, Oregon Laws 2003 shall be subject to section 5, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 598, OL 2003
Hist.: LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0060

Appointment of Arbitrator

Appointment of arbitrator shall be as provided in ORS 671.703 and shall be subject to a request for a different administrative law judge to act as arbitrator under section 11, chapter 849, Oregon Laws 1999, as amended by section 8, chapter 294, Oregon Laws 2001 and section 10, chapter 75, Oregon Laws 2003 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules shall be filed as follows:

(a) With the agency before a claim or dispute is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers a claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document such as a correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or dispute or their counsel if the parties are represented. Service under this section shall be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 808-004-0210, after the agency refers the claim or dispute to the Office of Administrative hearings and before the arbitrator issues an award a party must notify the Office of Administrative Hearings or arbitrator, and other parties to the claim or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183, 671
Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0140

Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 23 (1)(b), chapter 598, Oregon Laws 2003 for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under section 23 (1)(b), chapter 598, Oregon Laws 2003 may vacate an award.

(6) An arbitrator who does not disclose a know, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under section 23 (1)(b), chapter 598, Oregon Laws 2003.

(7) Substantial compliance with the procedures in this division 8 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under section 23 (1)(b), chapter 598, Oregon Laws 2003.

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703

ADMINISTRATIVE RULES

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0240

Oaths

An arbitrator shall take the oath provided by ORS 36.325.
Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183 & ORS 671.703(3)
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; Suspended by LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0280

Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0290

Summary Disposition

An arbitrator may decide a request for summary disposition of a claim or particular issue:

- (1) If all interested parties agree; or
- (2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.703
Hist.: LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0400

Services of Notices and Other Communications

(1) Communication, including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail.

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearings, the notice of hearings shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0420

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

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

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

(3) The award shall be in writing and shall be signed or otherwise authenticated by the arbitrator.

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

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

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 808-004-0540, 808-004-0550 or 808-008-0110; or

(b) The Statement of Claim filed by the party under OAR 808-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 671.690 and the parties to an arbitration have not agreed that the arbitrator may award damages against the claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

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

(8) Except as provided in OAR 808-008-0440 and 808-008-0460, an arbitration award is effective as an order to pay under OAR 808-004-0600 or an award that may be filed with the court with a petition to confirm the award under section 22, chapter 598, Oregon Laws 2003;

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

(b) Only if no party files a timely petition to modify or correct the award under OAR 808-008-0425.

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

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond required under ORS 671.690 and other amounts that are not payable from the bond under OAR 808-004-0250 or any other law, the award shall segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract as issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

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

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.703
Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0425

Petition to Modify or Correct an Award

(1) A party to an arbitration may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(c) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(d) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

ADMINISTRATIVE RULES

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

(11) If the arbitrator who prepared the award is not available to consider a petition to modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.673

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0430

Form of Petition to Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 808-008-0425 shall conform to the following requirements:

(a) The petition shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition shall be titled "Petition to modify or correct an Arbitration Award" and shall show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a claim, the first page shall show the claim number.

(c) Each page of the petition shall be numbered at the bottom of the page.

(d) For each modification or correction sought by petitioner, the following information should be included in the petition:

(A) The page or pages that petitioner asks to be modified or corrected;

(B) The text that petitioner asks to be modified or corrected; and

(C) An explanation or argument supporting petitioner's request for the modification or correction.

(e) The party submitting the petition shall sign and date the petition. The date shall be the date the petition is served on the arbitrator and on the other parties to the arbitration.

(2) The arbitrator may refuse to consider a petition that does not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.673

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0440

Payments from Licensee's Bond

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

(a) Under OAR 808-008-0420(8); or

(b) After an amended award is issued under OAR 808-008-0425(9).

(2) If an award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond or deposit of the business to the extent payment is authorized under ORS 671.710. Payments from the bond or deposit shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS chapter 671 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 808-004-0600 if no party files a petition to modify or correct the award with the court under section 22, chapter 598, Oregon Laws 2003 and delivers a copy of the petition to the agency within 30 days of the date the award becomes effective.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.703, 671.707 & 671.710

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0460

Filing with Court; Exceptions

(1) If a timely petition to modify or correct an award is filed with the arbitrator, a party may not file the award with the court under section 22, chapter 598, Oregon Laws 2003 until the arbitrator issues an amended award under OAR 808-008-0425(9).

(2) After an award becomes effective under OAR 808-008-0420(7), a denial of a petition to modify or correction an award is issued under OAR 808-004-0425(8) or an amended award is issued under OAR 808-008-

0425(9), a party to an arbitration may file the award or amended award with the court with a petition to confirm the award under section 22, chapter 598, Oregon Laws 2003.

(3) By proceeding with arbitration under these rules, parties shall be deemed to have consented that a judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(4) A party against whom an award is made may file a petition to modify or correct the award with the court under section 22, chapter 598, Oregon Laws 2003. The party filing the petition must deliver a copy of the petition to the agency within 30 calendar days from the date of the award. Failure to file a timely petition under this section is a waiver of the right to file a petition.

(5) If an award is made on a claim and the claimant does not file the award with the court under section 22, chapter 598, Oregon Laws 2003, the respondent must file the award with the court prior to respondent filing a petition of the award under section 22, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & ORS 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0500

Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to section 14 (1) to (3), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0510

Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to section 14 (4), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

808-008-0520

Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings, arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 808-008-0-510, the court may award attorney fees and costs as provided in section 14 (5), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thur 6-27-04

Oregon Criminal Justice Commission Chapter 213

Adm. Order No.: CJC 2-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 11-1-03

Rules Adopted: 213-018-0047, 213-018-0048

Rules Amended: 213-001-0000, 213-001-0005, 213-003-0001, 213-005-0001, 213-005-0004, 213-005-0007, 213-011-0003, 213-017-0001, 213-017-0002, 213-017-0003, 213-017-0004, 213-017-0005, 213-017-0006, 213-017-0007, 213-017-0008, 213-017-0009, 213-017-0010, 213-017-0011, 213-018-0038, 213-018-0050, 213-018-0090, 213-019-0007, 213-019-0008, 213-019-0010, 213-019-0011

Subject: The new and amended rules incorporate actions of the 2003 Legislative Assembly into the felony sentencing guidelines rules. Substantive changes include establishing crime seriousness rankings for new or amended felony crimes, designating certain offenses as "person" felonies or "person" misdemeanors, and updating the agency's notice rule and rule relating to alternative incarceration programs. The amendments also make non-substantive technical or housekeeping changes, including correcting punctuation, grammar, and capitalization, updating ORS references, providing uniform ref-

ADMINISTRATIVE RULES

ferences to the same crime throughout the rules, and listing offenses in order of their ORS citation.

Rules Coordinator: Phillip Lemman—(503) 986-6495

213-001-0000

Notice Rule for Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the chairperson of the Criminal Justice Commission or designee shall give notice of the proposed action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 28 days prior to the effective date of the proposed rule.

(2) By mailing a copy of the notice to persons on the Criminal Justice Commission mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date of the proposed rule.

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days prior to the effective date of the proposed rule.

(4) By mailing or furnishing a copy of the notice at least 28 days prior to the effective date of the proposed rule to:

- (a) Associated Press;
- (b) The Oregonian, Portland, Oregon;
- (c) East Oregonian, Pendleton, Oregon;
- (d) Statesman Journal, Salem, Oregon;
- (e) Medford Mail Tribune, Medford, Oregon;
- (f) The Register Guard, Eugene, Oregon;
- (g) The Bulletin, Bend, Oregon;
- (h) Oregon State Bar Bulletin;
- (i) Chief Justice, Oregon Supreme Court;
- (j) Chief Judge, Oregon Court of Appeals;
- (k) Oregon Circuit Judges Association;
- (l) Office of the Attorney General;
- (m) State Court Administrator;
- (n) American Civil Liberties Union;
- (o) Association of Oregon Counties;
- (p) Crime Victims United;
- (q) Oregon Association Chiefs of Police;
- (r) Oregon Community Corrections Directors Association;
- (s) Oregon Criminal Defense Lawyers Association;
- (t) Oregon District Attorneys Association;
- (u) Oregon State Sheriff's Association;
- (v) Office of Public Defense Services;
- (w) Rules Coordinator, Department of Corrections;
- (x) Association of Municipal Court Judges;
- (y) Justices of the Peace Association; and
- (z) Board of Parole and Post-Prison Supervision.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669

Hist.: SSGB 1-1988, f. & cert. ef. 11-16-88; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1995(Temp), f. & cert. ef. 9-1-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-001-0000; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-001-0005

Rulemaking Procedure

(1) All new and revised rules will be adopted in accordance with the provisions of ORS Chapter 183 and the Model Rules of Procedure adopted by the Oregon Attorney General.

(2) Amendments to the following divisions take effect on January 1, 2004: OAR 213-001-0000 and 0005; 213-003-0001(14), (15), (16); 213-005-0001, 0004, and 0007; 213-011-0003; 213-017-0001, 0002, 0003, 0004, 0005, 0006, 0007, 0008, 0009, 0010, and 0011, and 213-018-0038, 0050, and 0090; and 213-019-0007, 0008, 0010, 0011, 0012, and 0015.

(3) Adoption of rules OAR 213-018-0047 and 0048 take effect on January 1, 2004.

Stat. Auth.: ORS 137.596, 137.667, 421.412, 475.986, 475.998, 811.707

Stats. Implemented: ORS 137.667 - 137.669; 2001 Oregon Laws Chapters 147, 387, 502, 510, 615, 635, 696, 737, 804, 828, 857, 870, 884, 919, and 926; and 2003 OL Ch. 383, 453, 464, 484, 543, 550, 577, 632, 633, 804, 815.

Hist.: SSGB 1-1988, f. & cert. ef. 11-16-88; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-001-0005; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-003-0001

Definitions

(1) "Bench probation" means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) "Board" means the State Board of Parole and Post-Prison Supervision.

(3) "Correctional supervision status" means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) "Department" means the Department of Corrections.

(5) "Departure" means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) "Dispositional departure" means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) "Dispositional line" means the solid black line on the Sentencing Guidelines Grid (**Appendix 1**) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions.

(8) "Durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) "Grid" means the Sentencing Guidelines Grid set forth as **Appendix 1**.

(10) "Grid block" means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender's criminal history classification.

(11) "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) "Non-person felonies" are any felonies not defined as a person felony in section.

(14) Of this rule.

(13) "Optional probationary sentence" means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) "Person felonies" are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070 (1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 166.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 468.951 Environmental Endangerment; ORS 475.984 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and -0008); ORS 475.986 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, -0008, and -0011); ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.190

ADMINISTRATIVE RULES

Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); 2003 Oregon Laws Chapter 577 Strangulation, and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or the sentence otherwise established in ORS 137.717 or 137.719.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

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

Stat. Auth.: ORS 137.667, 475.986, 475.998, 2003 OL Ch. 453.

Stats. Implemented: ORS 137.667 – 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884, 2003 OL Ch. 453, 577.

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02

213-005-0001

Place and Term of Incarceration

(1) If an offense is classified in a grid block above the dispositional line, the presumptive sentence shall be a term of imprisonment within the durational range of months stated in the grid block. The sentencing judge should select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) Terms of incarceration 12 months or less shall be served at the direction of the supervisory authority. Terms of incarceration greater than 12 months shall be served in the legal and physical custody of the Department.

(3) Notwithstanding the term of imprisonment imposed by the sentencing court, and as authorized by the court pursuant to ORS 137.750 for crimes committed on or after December 5, 1996, an offender who enters and successfully completes a special alternative incarceration program, in accordance with the rules and procedures adopted by the Department of Corrections pursuant to ORS 421.500 et. seq., may be released early to serve the term of post-prison supervision imposed as part of the original sentence.

(4) Notwithstanding section (2) of this rule, terms of incarceration 12 months or less imposed pursuant to ORS 163.165(2) shall be served in the legal and physical custody of the Department.

Stat. Auth.: ORS 137.667, 421.512, 2003 OL Ch. 464

Stats. Implemented: ORS 137.667, 137.669, 137.750, 163.165(2), 421.512

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 1-1994, f. 6-27-94, cert. ef. 7-1-94; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-005-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-005-0004

Post-Prison Supervision for Murder, Aggravated Murder or as a Sexually Violent Dangerous Offender

(1) The term of post-prison supervision for an offender serving a sentence for murder or aggravated murder shall be for the remainder of the offender's life, unless the Board finds a shorter term appropriate. In no case shall the term of supervision be less than three years.

(2) The limit on sanctions for post-prison supervision violations provided in OAR 213-011-0004(3) shall not apply to offenders on post-prison supervision as provided by this rule.

(3) The term of post-prison supervision for an offender found by the sentencing court to be a sexually violent dangerous offender pursuant to ORS 137.765 shall be for the remainder of the offender's life.

(4) The limit on sanctions for post-prison supervision violations provided in OAR 213-011-0004(3) shall not apply to offenders on post-prison supervision as provided by section (3) of this rule.

(5) Offenders on post-prison supervision as provided by section (3) of this rule may be incarcerated up to 180 days for any violation of post-prison supervision. The sanction may be imposed repeatedly during the term of the post-prison supervision for subsequent post-prison supervision violations. The Board or supervisory authority may impose only a single sanction for all violations known to the Board or supervisory authority as of the date that the sanction is imposed.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 – 137.669, 137.765

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-005-0004; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-005-0007

Presumptive Probation Sentences

(1) Except as provided by OAR 213-009-0001, or otherwise established by ORS 137.717 or 137.719, if the offense is classified in a grid block below the dispositional line, the presumptive sentence shall be:

(a) A term of probation which may include custody and conditions of supervision; or

(b) Straight jail subject to the limits in OAR 213-005-0013.

(2) Each grid block below the dispositional line of the grid includes two components of a presumptive probationary sentence. The top number in each grid block is the number of sanction units that may be imposed as part of a presumptive probationary sentence. The bottom number in each grid block is the maximum number of sanction units that may be imposed as a jail term.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 – 137.669, 137.719

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-005-0007; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-011-0003

Level of Post-Prison Supervision

(1) During the term of post-prison supervision, the Department or its designee may adjust the level of supervision and recommend to the Board revisions to the conditions of supervision appropriate to the offender's conduct in the community.

(2) Notwithstanding section (1) of this rule, a person shall be subject to intensive supervision for the full period of post-prison supervision if the person is identified by the sentencing court, the Board or a supervisory authority to be a sexually violent dangerous offender pursuant to ORS 137.765 or 144.635.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 – 137.669, 137.765, 144.635

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, cert. ef. 3-8-96; Renumbered from 253-011-0003; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0001

Crime Category 11

The following offenses are classified at crime category 11 on the Crime Seriousness Scale: ORS 163.115 – MURDER – (U).

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 – 137.669

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0002

Crime Category 10

The following offenses are classified at crime category 10 on the Crime Seriousness Scale:

(1) ORS 163.095 – AGGRAVATED MURDER – (U).

(Attempt or Solicit)

(2) ORS 163.118 – MANSLAUGHTER I – (A).

(3) ORS 163.185 – ASSAULT I – (A).

(If victim did not substantially contribute to the commission of the offense by precipitating the attack; otherwise CC 9.)

(4) ORS 163.235 – KIDNAPPING I – (A).

(5) ORS 163.375 – RAPE I* – (A).

(If aggravated by factors listed below; otherwise CC 9.)

(6) ORS 163.405 – SODOMY I* – (A).

(If aggravated by factors listed below; otherwise CC 9.)

(7) ORS 163.411 – SEXUAL PENETRATION I* – (A).

(If aggravated by factors listed below; otherwise CC 9.)

ADMINISTRATIVE RULES

(8) ORS 164.325 – ARSON I – (A).

(If offense represented threat of serious physical injury; otherwise CC 9, 8 or 7.)

* Rape I, Sodomy I and Sexual Penetration with Foreign Object I shall be ranked at Crime Category 10 if one or more of the following factors were included in the commission of the offense:

- (a) The offender used or threatened to use a weapon;
- (b) The offender caused or threatened to cause serious physical injury;
- (c) The victim was under the age of twelve; or
- (d) The victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0003

Crime Category 9

The following offenses are classified at crime category 9 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.175 – ASSAULT II – (B).
- (3) ORS 163.185 – ASSAULT I – (A).
(If victim(s) substantially contributed to the commission of the offense by precipitating attack; otherwise CC 10.)
- (4) ORS 163.225 – KIDNAPPING II – (B).
- (5) ORS 163.375 – RAPE I – (A).
(If not categorized at CC 10.)
- (6) ORS 163.405 – SODOMY I – (A).
(If not categorized at CC 10.)
- (7) ORS 163.411 – SEXUAL PENETRATION I – (A).
(If not categorized at CC 10.)
- (8) ORS 164.225 – BURGLARY I – (A).
(If offender was armed with a deadly weapon, or caused, threatened or attempted physical injury; otherwise CC 8 or 7.)
- (9) ORS 164.325 – ARSON I – (A).
(If offense did not represent a threat of serious physical injury (CC 10) and the economic loss is greater than \$50,000; otherwise CC 8 or 7.)
- (10) ORS 164.405 ROBBERY II – (B).
- (11) ORS 164.415 ROBBERY I – (A).
Stat. Auth.: ORS 137.667, 475.986, 475.998, 2003 OL Ch. 453, 815
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998, 2003 OL Ch. 815
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0004

Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.125 – MANSLAUGHTER II – (B).
(If not categorized at CC 9.)
- (3) ORS 163.145 – NEGLIGENT HOMICIDE – (B).
(If not categorized at CC 9.)
- (4) ORS 163.207 – FEMALE GENITAL MUTILATION – (B)
- (5) ORS 163.365 – RAPE II – (B).
- (6) ORS 163.395 – SODOMY II – (B).
- (7) ORS 163.408 – SEXUAL PENETRATION II – (B).
- (8) ORS 163.427 – SEXUAL ABUSE I – (B).
- (9) ORS 163.537 – BUYING/SELLING THE CUSTODY OF A MINOR – (B).
(If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5)
- (10) ORS 163.670 – USING CHILD IN DISPLAY OF SEXUAL CONDUCT – (A).
- (11) ORS 163.684 – ENCOURAGING CHILD SEX ABUSE I – (B).
- (12) ORS 163.732 – STALKING – (C).
- (13) ORS 163.750 – VIOLATE COURT STALKING ORDER – (C).
- (14) ORS 164.225 BURGLARY I – (A).
(If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)
- (15) ORS 164.325 – ARSON I – (A).
(If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)
- (16) ORS 164.877(3) – TREE SPIKING-INJURY – (B).
- (17) ORS 166.275 – INMATE POSSESSION OF WEAPON – (A).
(if firearm, otherwise CC 7.)
- (18) ORS 167.012 – PROMOTING PROSTITUTION – (C).
- (19) ORS 167.017 – COMPELLING PROSTITUTION – (B).
- (20) ORS 167.262 – USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE – (A).
(CC 4 if minor less than 3 yrs. younger than offender)
- (21) ORS 811.705 – HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) – (B).

Stat. Auth.: ORS 137.667, 811.707, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 811.707, 2003 OL Ch. 453, 815

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0005

Crime Category 7

The following offenses are classified at crime category 7 on the Crime Seriousness Scale:

- (1) ORS 162.165 – ESCAPE I – (B).
- (2) ORS 162.185 – SUPPLYING CONTRABAND – (C).
(If the contraband includes one or more firearms; otherwise CC 4, 5 or 6.)
- (3) ORS 163.205 – CRIMINAL MISTREATMENT I – (C).
- (4) ORS 163.275 – COERCION – (C).
(If threat of physical injury; otherwise CC 6.)
- (5) ORS 163.425 – SEX ABUSE II – (C).
- (6) ORS 163.535 – ABANDON CHILD – (C).
(If child is placed in immediate physical danger; otherwise CC 3.)
- (7) ORS 164.075 – THEFT BY EXTORTION – (B).
(If threat of physical injury; otherwise CC 2, 3, 4, 5 or 6.)
- (8) ORS 164.225 – BURGLARY I – (A).
(If the offense cannot be ranked at CC 8 or 9.)
- (9) ORS 164.325 – ARSON I – (A).
(If the offense cannot be ranked at CC 8, 9 or 10.)
- (10) ORS 166.275 – INMATE IN POSSESSION OF WEAPON – (A).
(If firearm CC 8)
- (11) ORS 166.429 – FURNISHING FIREARM IN FURTHERANCE OF FELONY – (B).
- (12) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES – (B) <120,000.
- (13) 2003 Oregon Laws Ch 804 – UNLAWFUL DISTRIB. TOBACCO PRODUCTS – (B) <\$10,000
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804 Sec. 30 & 58
Stats. Implemented: ORS 137.667 - ORS 137.669, 2003 OL Ch. 453 & 804
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0006

Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 – BRIBERY – (B).
- (4) ORS 162.025 – BRIBE RECEIVING – (B).
- (5) ORS 162.065 – PERJURY – (C).
- (6) ORS 162.117 – PUBLIC INVESTMENT FRAUD – (B).
- (7) ORS 162.155 – ESCAPE II – (C).
- (8) ORS 162.185 – SUPPLYING CONTRABAND – (C).
(The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 – BRIBING A WITNESS – (C).
- (10) ORS 162.275 – BRIBE RECEIVING BY WITNESS – (C).
- (11) ORS 162.285 – TAMPERING W/ WITNESS – (C).
- (12) ORS 162.325 – HINDERING PROSECUTION – (C).
- (13) ORS 163.160(3) – FELONY DOMESTIC ASSAULT – (C).
- (14) ORS 163.165 – ASSAULT III – (C).
- (15) ORS 163.208 – ASSAULT OF A PUBLIC SAFETY OFFICER – (C).
- (16) ORS 163.213 – USE OF A STUN GUN, TEAR GAS, MACE I – (C).
- (17) ORS 163.257 – CUSTODIAL INTERFERENCE I – (C).
- (18) ORS 163.275 – COERCION – (C).
(No threat of physical injury; otherwise CC 7.)
- (19) ORS 163.355 – RAPE III – (C).
- (20) ORS 163.385 – SODOMY III – (C).
- (21) ORS 163.465 – FELONY PUBLIC INDECENCY – (C).
- (22) ORS 163.525 – INCEST – (C).
(If one of the participants is under the age of 18; otherwise CC 1.)
- (23) ORS 163.688 – POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I – (B).
- (24) ORS 164.055 – THEFT I* – (C).
- (25) ORS 164.057 – AGGRAVATED THEFT – (B).
(Economic loss was greater than \$50,000; otherwise CC 5.)
- (26) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY * – (C).
- (27) ORS 164.075 – THEFT BY EXTORTION* – (B).
- (28) ORS 164.085 – THEFT BY DECEPTION* – (C).
- (29) ORS 164.125 – THEFT OF SERVICES* – (C).
- (30) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
- (31) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY * – (C).
- (32) ORS 164.215 – BURGLARY II* – (C).

ADMINISTRATIVE RULES

- (33) ORS 164.315 – ARSON II* – (C).
(34) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
(35) ORS 164.377 – COMPUTER FRAUD (LOTTERY) * – (C).
(36) ORS 164.377(3) – COMPUTER CRIME* – (C).
(37) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
(38) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
(39) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
(40) ORS 164.877(1) – TREE-SPIKING – (C).
(41) INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
(42) ORS 165.013 – FORGERY I* – (C).
(43) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
(44) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
(45) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
(46) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD * – (C).
(47) ORS 165.692 – FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT – (C).
(48) ORS 165.800 – IDENTITY THEFT* – (C).
(49) ORS 166.015 – RIOT – (C).
(50) ORS 166.165 – INTIMIDATION I – (C).
(51) ORS 166.220 – UNLAWFUL USE OF WEAPON – (C).
(52) ORS 166.270 – EX-CON IN POSSESSION OF FIREARM – (C).
(53) ORS 166.272 – UNLAWFUL POSSESSION OF FIREARM – (B).
(54) ORS 166.370(1) – INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) – PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL – (C).
(55) ORS 166.382 – POSSESSION OF DESTRUCTIVE DEVICE – (C).
(56) ORS 166.384 – UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE – (C).
(57) ORS 166.410 – ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS – (B).
(58) ORS 166.643 – UNLAWFUL POSSESS SOFT BODY ARMOR – (B).
(If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
(59) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION * – (C).
(59) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
(60) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
(61) ORS 811.182 – DRIVING WHILE SUSPENDED/ REVOKED – (C).
(62) ORS 811.705 – HIT & RUN VEHICLE (INJURY) – (C).
(63) ORS 813.010 – FELONY DRIVING UNDER THE INFLUENCE – (C).
(64) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
(65) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).
(If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
(66) ORS 830.475 – HIT AND RUN BOAT – (C).
(67) 2003 Oregon Laws Ch 543 – ASSAULT OF A LAW ENFORCEMENT ANIMAL – (C).
* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation. Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 2001 OL Ch. 383, 453, 543.
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04
- (If not categorized at CC 6.)
(8) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY* – (C).
(9) ORS 164.075 – THEFT BY EXTORTION* – (B).
(10) ORS 164.085 – THEFT BY DECEPTION* – (C).
(11) ORS 164.095 – THEFT BY RECEIVING – (C).
(If part of an organized operation; otherwise CC 3.)
(12) ORS 164.125 – THEFT OF SERVICES* – (C).
(13) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE * – (C).
(14) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY * – (C).
(15) ORS 164.215 – BURGLARY II* – (C).
(16) ORS 164.315 – ARSON II* – (C).
(17) ORS 164.365 – CRIMINAL MISCHIEF I * – (C).
(18) ORS 164.377(5) – COMPUTER FRAUD (LOTTERY) * – (C).
(19) ORS 164.377(5) – COMPUTER CRIME* – (C).
(20) ORS 164.395 – ROBBERY III – (C).
(21) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
(22) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
(23) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
(24) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
(25) ORS 165.013 – FORGERY I* – (C).
(26) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
(27) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
(28) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
(29) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD * – (C).
(30) ORS 165.800 – IDENTITY THEFT* – (C).
(31) ORS 166.087 – ABUSE OF CORPSE I – (B).
(32) ORS 166.385(3) – FELONY POSSESSION OF A HOAX DESTRUCTIVE DEVICE – (C).
(33) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).
(34) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
(35) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
(34) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
(35) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).
(If not categorized at CC 6.)
(36) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES – (C) <120,000.
(37) 2003 Oregon Laws Ch 804 – UNLAWFUL DISTRIB. TOBACCO PRODUCTS – (C) <\$10,000
* Property offenses marked with an asterisk shall be ranked at Crime Category 5 if the value of the property stolen was \$10,000 but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation. Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804 Sec. 30 & 58
Stats. Implemented: ORS 137.667 - ORS 137.669, 2003 OL Ch. 453 & 804
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04
- 213-017-0008**
Crime Category 4
The following offenses are classified at crime category 4 on the Crime Seriousness Scale:
(1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
(2) DRUG OFFENSES (See division 19.)
(3) ORS 162.185 – SUPPLYING CONTRABAND – (C).
(If offense cannot be ranked at CC 5, 6 or 7.)
(4) ORS 162.205 – FAILURE TO APPEAR I – (C).
(5) ORS 163.245 – CUSTODIAL INTERFERENCE II – (C).
(6) ORS 163.547 – CHILD NEGLECT I – (B).
(7) ORS 163.689 – POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF CHILD II – (C).
(8) ORS 164.055 – THEFT I * – (C).
(9) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY* – (C).
(10) ORS 164.075 – THEFT BY EXTORTION* – (B).
(11) ORS 164.085 – THEFT BY DECEPTION* – (C).
(12) ORS 164.125 – THEFT OF SERVICES* – (C).
(13) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
(14) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY* – (C).
(15) ORS 164.215 – BURGLARY II* – (C).
(16) ORS 164.315 – ARSON II* – (C).
(17) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
(Except ORS 164.365(1)(e).)
(18) ORS 164.377(5) – COMPUTER FRAUD (LOTTERY)* – (C).

ADMINISTRATIVE RULES

- (19) ORS 164.377(5) – COMPUTER CRIME* – (C).
- (20) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
- (21) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
- (22) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
- (23) ORS 165.013 – FORGERY I* – (C).
- (24) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
- (25) ORS 165.032 – CRIMINAL POSSESSION OF FORGERY DEVICE – (C).
- (26) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
- (27) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
- (28) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD* – (C).
- (29) ORS 165.581 – CELLULAR COUNTERFEITING I – (B).
- (30) ORS 165.800 – IDENTITY THEFT* – (C).
- (31) ORS 166.643 – UNLAWFUL POSSESS SOFT BODY ARMOR – (B).

(If not categorized at CC 6)

- (32) ORS 167.262 – USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE – (A).

(CC 8 if minor 3 or more yrs. Younger than offender.)

- (33) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).

- (34) ORS 181.599 – FAIL/REPORT SEX OFFENDER – (C).
- (35) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
- (36) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
- (37) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
- (38) 2003 Oregon Laws Ch 632 – UNLAWFUL POSSESSION PERSONAL ID DEVICE – (C)

* Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

- (a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or
 - (b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.
- Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 – 137.669, 164.889, 166.643; 2003 OL Ch. 383, 453, 543, 632
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0009

Crime Category 3

The following offenses are classified at crime category 3 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
- (2) ORS 162.305(2)(b) – TAMPER LOTTERY RECORDS – (C).
- (3) ORS 162.355 – SIMULATING LEGAL PROCESS – (C).
- (4) ORS 162.365(3)(b) – CRIMINAL IMPERSONATION OF PEACE OFFICER, JUDGE OR JUSTICE OF THE PEACE – (C).
- (5) ORS 162.367 – FALSE LAW ENFORCEMENT ID – (C).
- (6) ORS 163.535 – ABANDON CHILD – (C).
- (If not ranked at CC 7.)
- (7) ORS 163.555 – CRIMINAL NONSUPPORT – (C).
- (8) ORS 164.055 – THEFT I* – (C).
- (9) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY* – (C).
- (10) ORS 164.075 – THEFT BY EXTORTION* – (B).
- (11) ORS 164.085 – THEFT BY DECEPTION* – (C).
- (12) ORS 164.095 – THEFT BY RECEIVING – (C).
- (If not ranked at CC 5.)
- (13) ORS 164.125 – THEFT OF SERVICES* – (C).
- (14) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
- (15) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY* – (C).
- (16) ORS 164.215 – BURGLARY II* – (C).
- (17) ORS 164.315 – ARSON II* – (C).
- (18) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
- (19) ORS 164.377(5) – COMPUTER FRAUD (LOTTERY)* – (C).
- (20) ORS 164.377(5) – COMPUTER CRIME* – (C).
- (21) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
- (22) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
- (23) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
- (24) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
- (25) ORS 165.013 – FORGERY I* – (C).

- (26) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
- (27) ORS 165.055(4)(B) – CREDIT CARD FRAUD* – (C).
- (28) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
- (29) ORS 165.070 – POSSESSION OF FAKE COMMUNICATIONS DEVICE – (C).
- (30) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD* – (C).
- (31) ORS 165.800 – IDENTITY THEFT* – (C).
- (32) ORS 166.085 – ABUSE OF CORPSE II – (C).
- (33) ORS 167.062(4) – PROMOTING LIVE SEX SHOW – (C).
- (34) ORS 167.137 – UNLAWFUL GAMBLING I – (C).
- (35) ORS 167.137 – POSSESSION OF GAMBLING RECORDS I – (C).

- (36) ORS 167.320 – FELONY ANIMAL ABUSE I – (C).
- (37) ORS 167.322 – AGGRAVATED ANIMAL ABUSE I – (C).
- (38) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).

- (39) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
- (40) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
- (41) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
- (42) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES – (C) <60,000.
- (43) 2003 Oregon Laws Ch 804 – UNLAWFUL DISTRIB. TOBACCO PRODUCTS – (C) <\$5,000

* Property offenses marked with an asterisk shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

- (a) The value of the property stolen or destroyed was \$1,000 or more but less than \$5,000; or
 - (b) The property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.
- Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804 Sec. 30 & 58
Stats. Implemented: ORS 137.667 – 137.669, 164.889, 167.109, 167.320, 2003 OL Ch. 383, 453, 804
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0010

Crime Category 2

The following offenses are classified at crime category 2 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
- (2) ORS 164.055 – THEFT I* – (C).
- (3) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY* – (C).
- (4) ORS 164.075 – THEFT BY EXTORTION* – (B).
- (5) ORS 164.085 – THEFT BY DECEPTION* – (C).
- (6) ORS 164.125 – THEFT OF SERVICES* – (C).
- (7) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
- (8) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY* – (C).
- (9) ORS 164.215 – BURGLARY II* – (C).
- (10) ORS 164.315 – ARSON II* – (C).
- (11) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
- (12) ORS 164.377(5) – COMPUTER FRAUD (LOTTERY)* – (C).
- (13) ORS 164.377(5) – COMPUTER CRIME* – (C).
- (14) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
- (15) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
- (16) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
- (17) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
- (18) ORS 165.013 – FORGERY I – (C).
- (19) ORS 165.022 – CRIMINAL POSSESSION FORGED INSTRUMENT I* – (C).
- (20) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
- (21) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
- (22) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD* – (C).
- (23) ORS 165.085 – SPORTS BRIBERY – (C).
- (24) ORS 165.090 – RECEIVING SPORTS BRIBE – (C).
- (25) ORS 165.579 – CELLULAR COUNTERFEIT II – (C).
- (26) ORS 165.800 – IDENTITY THEFT* – (C).
- (27) ORS 166.642 – FELON POSSESS SOFT BODY ARMOR – (C).
- (28) ORS 167.164 – POSSESS GRAY MACHINE – (C).
- (29) ORS 167.167 – CHEATING AT GAMBLING – (C).
- (30) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).

ADMINISTRATIVE RULES

(31) ORS 411.630 – OBTAINING PUBLIC ASSISTANCE UNLAWFULLY – (C).

(32) ORS 411.840 – OBTAIN/USE FOOD STAMPS UNLAWFULLY – (C).

(33) ORS 496.992(3) – VIOLATION OF WILDLIFE LAWS – (C).

(34) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).

(35) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).

(36) ORS 811.540 – FELONY ATTEMPTING TO ELUDE (in a vehicle) – (C).

(37) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).

(38) 2003 Oregon Laws Ch 550 – ORGANIZE SPEED RACING EVENT – (C)

(39) 2003 Oregon Laws Ch 632 – UNLAWFUL POSSESSION FICTITIOUS ID – (C)

(40) 2003 Oregon Laws Ch 633 – UNLAWFUL PRODUCTION ODOT ID CARDS – (C)

* Property offenses marked with an asterisk shall be ranked at Crime Category 2 if the value of the property stolen or destroyed was less than \$1,000.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 – 137.669, 164.889, 166.642, 2003 OL Ch. 383, 453, 550, 632, 633

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-017-0011

Crime Category 1

The following offenses are classified at crime category 1 on the Crime Seriousness Scale:

(1) DRUG POSSESSION/PERSONAL USE (See division 19.)

(2) ORS 163.515 – BIGAMY – (C).

(3) ORS 163.525 – INCEST – (C).

(If the incestuous relationship is between adults; otherwise CC 6.)

(4) ORS 166.450 – ALTERING FIREARM ID. – (C).

(5) ORS 166.651 – THROW OBJECT OFF OVERPASS – (C).

(6) ORS 166.660 – UNLAWFUL PARAMILITARY ACTIVITY – (C).

(7) ORS 167.212 – TAMPERING W/ DRUG RECORDS – (C).

(8) ORS 332.480(2) – DISTRIBUTE CIGARETTES W/OUT LICENSE – (C).

(9) ORS 332.480(3) – FALSE REPORT/CIGARETTE TAX – (C).

(10) ORS 332.480(4) – UNLAWFUL TRANSPORT UNTAXED CIGARETTES – (C)

(11) ORS 432.993 – UNLAWFUL USE OF A VITAL RECORD OR REPORT – (C).

(12) ORS 468.953 – SUPPLY FALSE INFO TO AGENCY (ENVIRONMENTAL) – (C).

(13) ORS 475.993(2)(a) – FAILURE TO MAINTAIN RECORDS OF CONTROLLED SUBSTANCES – (C).

(14) ORS 702.032 – INDUCING AN ATHLETE/CONTRACT – (C).

(15) ORS 702.042 – ATHLETIC AGENT NOTICE REQUIREMENT – (C).

(16) ORS 717.905(2) – FALSE STATEMENT MONEY TRANSMISSION – (C).

(17) ORS 717.905(3) – ENGAGE MONEY TRANSMISSION W/OUT LICENSE – (C).

(18) ORS 803.080 – UNLAWFULLY PUBLISHING CERTIFICATE OF TITLE – (C).

(19) ORS 803.230 – FORGE/ALTER VEHICLE TITLE/REG. – (C).

(20) ORS 822.605 – FALSE SWEARING VEHICLE BUSINESS – (C).

(21) 2003 Oregon Laws Ch 484 – FORCIBLE RECOVERY OF FIGHTING BIRD – (C).

(22) 2003 Oregon Laws Ch 804 – FALSE RECEIPT/INVOICE CIGARETTE SALES – (C).

(23) 2003 Oregon Laws Ch 804 – DISTRIBUTE TOBACCO PRODUCTS W/OUT – (C).

(24) 2003 Oregon Laws Ch 804 – LICENSE FALSE REPORT/TOBACCO PRODUCTS TAX – (C).

(25) 2003 Oregon Laws Ch 804 – UNLAWFUL TRANSPORT UNTAXED – (C).

(26) 2003 Oregon Laws Ch 804 – TOBACCO PRODUCTS FALSE RECEIPT/INVOICE TOBACCO – (C).

(27) 2003 Oregon Laws Ch 804 – PRODUCTS SALES UNLAWFUL TOBACCO DELIVERY SALES – (U)

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 – 137.669 332.480, 2003 OL Ch. 453, 484, 804

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-018-0038

HIT AND RUN (VEHICLE) (ORS 811.705)

(1) **CRIME CATEGORY 8:** Hit and Run shall be ranked at Crime Category 8 if a person suffers serious physical injury or dies as a result of the accident.

(2) **CRIME CATEGORY 6:** Hit and Run shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 8.

Stat. Auth.: ORS 137.667, 811.707, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 – 137.669 811.707, 2003 OL Ch. 453

Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-018-0047

Manslaughter II (ORS 163.125)

(1) **CRIME CATEGORY 9:** Manslaughter II shall be ranked at Crime Category 9 if the manslaughter resulted from the operation of a motor vehicle and the driver of the motor vehicle was driving while under the influence of intoxicants.

(2) **CRIME CATEGORY 8:** Manslaughter II shall be ranked at Crime Category 8 if it cannot be ranked at Crime Category 9.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 815.

Stats. Implemented: ORS 137.667, OL Ch. 815

Hist.: CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-018-0048

Negligent homicide (ORS 163.145)

(1) **CRIME CATEGORY 9:** Negligent Homicide shall be ranked at Crime Category 9 if the homicide resulted from the operation of a motor vehicle and the driver of the motor vehicle was driving while under the influence of intoxicants.

(2) **CRIME CATEGORY 8:** Negligent Homicide shall be ranked at Crime Category 8 if it cannot be ranked at Crime Category 9.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 815.

Stats. Implemented: ORS 137.667, OL Ch. 815

Hist.: CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-018-0050

Property Offenses

(1) The same offense seriousness subcategories shall be used for the following offenses (“property offenses”):

(a) Arson II (ORS 164.315);

(b) Blue Sky Laws and Securities Laws (ORS Chapter 59);

(c) Burglary II (ORS 164.215);

(d) Computer Crime (ORS 164.377(5));

(e) Computer Fraud (Lottery) (ORS 164.377(5));

(f) Credit Card Fraud (ORS 165.055(3)(b));

(g) Criminal Mischief I (ORS 164.365);

(h) Criminal Possession of Forged Instrument I (ORS 165.022)

(i) Forgery I (ORS 165.013);

(j) Identity Theft, (ORS 165.800);

(k) Interference with Agricultural Research, (ORS 164.889);

(l) Interference with Livestock Production (ORS 167.388);

(m) Negotiating Bad Checks (ORS 165.065);

(n) Possession of Rented Property (ORS 164.140(4));

(o) Possession of Stolen Vehicle (ORS 819.300);

(p) Theft by Deception (ORS 164.085);

(q) Theft by Extortion (ORS 164.075)(except if threat of physical injury (CC 7));

(r) Theft I (ORS 164.055);

(s) Theft of Lost/Mislaid Property (ORS 164.065);

(t) Theft of Services (ORS 164.125);

(u) Trademark Counterfeiting I and II, (ORS 647.150; ORS 647.145);

(v) Unauthorized Use of Vehicle (ORS 164.135);

(w) Unlawful Factoring Payment Card (ORS 165.074);

(x) Unlawful Label Sound Recording (ORS 164.868);

(y) Unlawful Label Videotape (ORS 164.872);

(z) Unlawful Record Live Performance (ORS 164.869).

(2) **CRIME CATEGORY 6:**

(a) Property offenses shall be ranked at Crime Category 6 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

(b) ORS 165.055(4)(b) Credit Card Fraud shall be ranked at Crime Category 6 if the property stolen or attempted to be stolen was \$50,000 or more.

(3) **CRIME CATEGORY 5:**

(a) Property offenses shall be ranked at Crime Category 5 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$10,000 or more but less than \$50,000,

ADMINISTRATIVE RULES

excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

(b) ORS 165.055(4)(b) Credit Card Fraud shall be ranked at Crime Category 5 if the property stolen or attempted to be stolen was \$10,000 or more but less than \$50,000.

(4) **CRIME CATEGORY 4:** Property offenses shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$5,000 or more but less than \$10,000; or

(b) For offenses charged under ORS 165.055(4)(b), the value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or

(c) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

(5) **CRIME CATEGORY 3:** Property offenses shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$1,000 or more but less than \$5,000; or

(b) For offenses charged under ORS 165.055(4)(b), the value of the property stolen or destroyed was \$1,000 or more but less than \$5,000; or

(c) The property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.

(6) **CRIME CATEGORY 2:** Property offenses shall be ranked at Crime Category 2 if they cannot be ranked at Crime Category 3, 4, 5, or 6.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 164.889 & 2003 OL Ch. 383
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-018-0090

Unlawful Possession of Soft Body Armor (ORS 166.643)

(1) **CRIME CATEGORY 6:** Unlawful Possession of Soft Body Armor shall be ranked at Crime Category 6 if the offender committed or was attempting to commit a person felony or a misdemeanor involving violence.

(2) **CRIME CATEGORY 4:** Unlawful Possession of Soft Body Armor shall be ranked at Crime Category 4 if it cannot be ranked at Crime Category 6.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 166.643 & 2003 OL Ch. 453
Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-019-0007

Crime Category 9 — Aggravated Drug Offenses

(1) ORS 475.984(2) CAUSING ANOTHER TO INGEST A CONTROLLED SUBSTANCE:

(a) Causing Another to Ingest a Controlled Substance shall be ranked at Crime Category 9.

(b) If the act is done with the intent to commit or facilitate a crime of violence.

(2) ORS 475.986(1)(a) UNLAWFUL ADMINISTRATION OF A CONTROLLED SUBSTANCE (A):

(a) Unlawful Administration of a Controlled Substance shall be ranked at Crime Category 9.

(b) When the substance is a Schedule I or II controlled substance.
Stat. Auth.: ORS 137.667, 475.986, 475.998, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998, 2003 OL Ch. 453
Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-019-0008

Crime Category 8 — Aggravated Drug Offenses

(1) ORS 475.999 Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School.

(2) ORS 475.995 Distribution to Minors: Distribution to Minors shall be classified in Crime Category 8 if the offender is more than three years older than the person receiving the drugs. If the offender is less than three years older than the person receiving the drugs, the Distribution to Minors shall be ranked according to the sub-categories identified for ORS 475.992.

(3) ORS 167.262 Using a Minor in Controlled Substance Offense Using a minor in a drug offense shall be ranked in Crime Category 8 unless the minor is less than three (3) years younger than the offender, in which case the offense will be ranked in Crime Category 4.

(4) ORS 475.992 Manufacture and Delivery — Substantial Quantities: Manufacture and Delivery of Controlled Substances shall be ranked at Crime Category 8 if the violation involves substantial quantities as set forth at ORS 475.996(1)(a).

(5) ORS 475.992 Manufacture/Delivery/Possession — Commercial Drug Offense Manufacture, Delivery or Possession of Controlled Substances shall be ranked at Crime Category 8 if the violation is a commercial drug offense as set forth at ORS 475.996(1)(b).

(6) ORS 475.984(1) Causing Another to Ingest a Controlled Substance. Causing Another to Ingest a Controlled Substance shall be ranked at Crime Category 8 if it cannot be ranked at Crime Category 9.

(7) ORS 475.986(1)(b) Unlawful Administration of a Controlled Substance Unlawful Administration of a Controlled Substance shall be ranked at Crime Category 8 when the substance is a Schedule III controlled substance.

Stat. Auth.: ORS 137.667, 475.986, 475.998, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998, 2003 OL Ch. 453
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0001; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-019-0010

Crime Category 6 — Major Drug Offenses

(1) ORS 475.992 Delivery Delivery of heroin, cocaine, methamphetamine or ecstasy for consideration shall be ranked at Crime Category 6.

(2) ORS 475.992 Possession: Possession of a Controlled Substance shall be ranked at Crime Category 6 if the violation involves substantial quantities as set forth at ORS 475.996(2)(b).

(3) ORS 475.967 Possession of a Precursor Substance with the Intent to Manufacture Possession of a Precursor Substance with Intent to Manufacture a Controlled Substance shall be ranked at Crime Category 6.

Stat. Auth.: ORS 137.667, 475.986, 475.998, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.967, 475.99, 2003 OL Ch. 453
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0002; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

213-019-0011

Crime Category 5 — Drug Offenses

ORS 475.986(1)(c) Unlawful Administration of a Controlled Substance Unlawful Administration of a Controlled Substance shall be ranked at Crime Category 5 when the substance is a Schedule IV controlled substance.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 2003 OL Ch. 453
Hist.: CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04

Oregon Department of Education Chapter 581

Adm. Order No.: ODE 17-2003

Filed with Sec. of State: 12-30-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 10-1-03

Rules Amended: 581-045-0001, 581-045-0012, 581-045-0018, 581-045-0019, 581-045-0023, 581-045-0026, 581-045-0032, 581-045-0065, 581-045-0068, 581-045-0200

Subject: There are approximately 900 teachers of cosmetology who are required to have their licenses renewed by this office every three years. Currently, there is no charge for this renewal. However, this office must document and evaluate a minimum of 30 hours of continuing education for each teacher's license renewal. This measure would allow the office of Private Career Schools to recoup part of the staff time cost. The other part of the measure would allow the Private Career School office to charge for issuance of student transcripts. When schools close, all student transcripts are forwarded to this office. Currently, we store over 50,000 transcripts for these closed schools. We average 24 transcript requests each month. Students needing transcripts would pay a fee for issuance of transcripts in a similar manner used by other schools.

If you have questions regarding these rules, please contact Ray Lindley at (503) 378-3600, ext. 2671 or e-mail ray.lindley@state.or.us. For a copy of a rule, please contact Debby Ryan at (503) 378-3600, ext. 2358 or e-mail debby.ryan@state.or.us

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-045-0001

Definitions

The following definitions apply to OAR 581-045-0006 through 581-045-0210, unless otherwise indicated by the context:

(1) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited

ADMINISTRATIVE RULES

to print media, catalogs and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(2) "Ability to benefit" is a determination made by the school through some form of assessment (e.g. entrance examination) that indicates the student has a reasonable chance to succeed in the program and be employed in the profession for which the student is preparing.

(3) "Agent" has the meaning given in ORS 345.010(1).

(4) "Approved" means accepted by the State Board of Education or by the Superintendent in matters relating to school licensing requirements.

(5) "Assessment" means a written, oral, and/or hands-on evaluation of an applicant's progress in the educational program.

(6) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions, that the Superintendent determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Department;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) Conditions listed in subsections (6)(d) and (e) of this rule, caused by unusual circumstance or reason, shall be evaluated by the Superintendent and exceptions may be granted.

(7) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment, or

(d) Is a site approved by the Department of Education for teaching a short-term course that is taught by registered teachers from the principal facility.

(8) "Barbering" has the meaning given in ORS 690.005.

(9) "Board" means the State Board of Education.

(10) "Bona fide organization or group" means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(11) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(12) "Class" means a scheduled meeting of persons for instructional purposes.

(13) "Clinic lab" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(14) "Completion" means the student has satisfactorily finished all the requirements of the program in which enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(15) "Continuing education" means the enrollment in and completion of ongoing, Department approved instruction, outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught.

(16) "Course" means an aggregation of classes to achieve a complete set of competencies.

(17) "Department" means the Oregon Department of Education.

(18) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion, or sex.

(19) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(20) "Enrollment" means a student agrees to the purchase of a course or program of instruction from a school and signs an enrollment agreement, instrument or note, however named that commits both the student and the school to a legal and binding obligation.

(21) "Facial technology" has the meaning given in ORS 690.0005.

(22) "Fund" means the private career school Tuition Protection Fund (TPF).

(23) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR 581-045-0001 through

581-045-0210, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Registration/application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(24) "Hair design" has the meaning given in ORS 690.005.

(25) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

(26) "License" means a license to operate a private career school.

(27) "Nail technology" has the meaning given in ORS 690.005.

(28) "On-site review" means a visit to the school by authorized Department staff that may review the facilities, classrooms, and school records, talk with students, staff, and administrators, and determine whether the school is in compliance with Oregon law.

(29) "Operating/operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OARs 581-045-0001 through 581-045-0210.

(30) "Placement" means the student has been employed in the occupation for which trained.

(31) "Probation" means that a school has been officially notified by the Superintendent that it has deficiencies that must be corrected within a specified time.

(32) "Program" means an aggregation of courses to meet an identified occupational objective.

(33) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(34) "Program improvement plan" means a written outline or plan designed to describe how the school will resolve or comply with violations of state rule or regulation assessed by the Superintendent and/or correct any deficiencies identified by the Superintendent.

(35) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(36) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollments in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(37) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(38) "Registration/application fee" means any fee, however named, covering those expenses incurred by a school in processing student applications and establishing a student records system and so identified on the student enrollment agreement.

(39) "Reporting period" means the period from July 1 of one year to June 30 of the next year on which schools shall base all student placement and program records and reports that must be submitted to the Department. The school's fiscal year may be for the same period, the calendar year, or some other 12-month time period.

(40) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(41) "Revoke" means the Superintendent terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(42) "School" has the meaning given in ORS 345.010.

(43) "Short term course" means a course no longer than 16 clock hours in duration that is offered to prepare a student for a state examination or licensure, which is required to enter a profession.

(44) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, and consists of members who shall serve for terms of three years ending June 30.

(45) "Structured work experience or externship" means a worksite educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(46) "Superintendent" means the State Superintendent of Public Instruction or qualified designee.

ADMINISTRATIVE RULES

(47) "Suspend" means the Superintendent has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to preclude suspension.

(48) "Teachout" means a defaulting school or the Department makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the Superintendent and, if ongoing, approved annually by the Superintendent.

(49) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(50) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(51) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e. course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.010

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0012

Personnel

(1) A school shall establish, publish, and enforce specific written policies that set standards for the staff's:

- (a) Professional performance and conduct;
- (b) Evaluation; and
- (c) Continuing education.

(2) Schools shall employ only teachers who are registered with the Department and who meet the requirements of section (3) of this rule. All applications for approval of teachers shall:

- (a) Be recorded on forms provided by the Department;
- (b) Indicate the specific subjects the prospective teacher will teach;
- (c) Be signed by the prospective teacher and the school director, except teachers regulated by OAR 581-045-0200 need only the prospective teacher's signature; and
- (d) Be accompanied by relevant official transcripts, letters, and documents that confirm that the teacher meets the minimum requirements listed in subsection (3) (a) and (b) of this rule.

(3) Teachers must hold all Oregon licenses, certificates and ratings, and successfully pass qualifying exams legally required for employment in the field in which they teach. However, the Superintendent upon written request may grant waivers from the school.

(a) All teachers must have graduated from high school as evidenced by a photocopy of a high school transcript indicating graduation, a high school diploma or its foreign equivalent. As an alternative, the teacher may show evidence of a General Education Development (GED) certificate. The Superintendent may grant a waiver to this limitation if sufficient evidence is submitted.

(b) All teachers must have at least two years of work experience or two years of education, or any combination of both, in the subject that they instruct. For new teachers the work experience must have been within the last five years;

(c) Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time work experience;

(d) Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks);

(e) In emergency situations, not to exceed three months, schools may hire substitute teachers who are the best-qualified persons available. Under no circumstances shall students be allowed to substitute as approved teachers;

(f) If a school utilizes any form of teacher assistants, aides or trainees, it shall establish and maintain policies that set forth qualifications, duties, procedures for use of these personnel, and maintain a copy of these policies for review by the Department. Teacher assistants, aides, and/or trainees shall:

- (A) Not be used as substitutes or replacements for regular teachers,
- (B) Work under the direct supervision of an approved teacher, and
- (C) Evaluate students only under direct supervision of an approved teacher;

(f) The school shall have and implement written policies to promote improvement of teacher competency in their fields and in levels of performance in their teaching assignments. A recommended minimum for continuing education is 30 hours during each three year period; and

(g) The teacher's registration shall not be transferable from one school to another and shall terminate on cessation of the teacher's employment with the school. Exceptions to this rule include registered instructors of hair design, nail and facial technology, and barbering.

(4) Directors must have at least two years of experience in school or business administration, teaching, or other experience directly related to their duties within the school's organization. The experience must have been within the last five years. Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience. Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks). Qualified persons who do not meet the criteria in section (8) of this rule may be appointed as directors with prior approval by the Superintendent and with a letter as required in subsection (8)(c) of this rule.

(5) Owners and directors, administrators, agents, supervisors, and instructors (hereinafter collectively "employees") subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450 are subject to suspension, revocation, or other discipline if the employee:

- (a) Is charged with knowingly making any false statements in the application for a license, registration, or approval;
- (b) Is charged with gross neglect of duty; or
- (c) Is charged with gross unfitness.

(6) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following acts constitute gross neglect of duty:

- (a) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;
- (b) Substantial deviation from professional standards of competency;
- (c) Violation of any ethical standard contained in OAR 581-045-0012(9);
- (d) Engaging in acts in violation of laws or rules applicable to the profession;

(e) Failure or refusal to respond to questions, to provide information, or to furnish documents to a Department of Education representative pursuant to review, assessment, or investigation; or

(f) Any other statement or act or omission not consistent with personal integrity, ethics, or honesty.

(7) Gross unfitness is any conduct that renders an owner or employee unqualified to perform duties. The following acts constitute gross unfitness:

(a) Convictions of a crime or offense specified in OAR 581-045-0012(8) or engaging in such wrongful acts even in the absence of a conviction;

(b) Commission of fraud, misrepresentation, or deceit;

(c) Commission of unfair, deceptive, or unlawful trade practices as defined in the Oregon Unlawful Trade Practices Act.

(8) No licensed school shall be owned by or employ an individual who is not of good moral character and reputation:

(a) Upon review by the Department, the Superintendent may find a person not to be of good moral character and reputation when the person:

(A) Has been convicted of a felony or a misdemeanor that involves the illegal use, sale or possession of a controlled substance, or that involves any sexual offense, or any violent offense;

(B) Has been convicted of an offense involving fraud or misrepresentation, or has committed fraud, misrepresentation, or deceit or has committed unfair, deceptive, or unlawful trade practices regulated by the Oregon Unlawful Trade Practices Act (ORS 646.605 — 646.652); or

(C) Is currently subject to suspension or revocation under OAR 581-045-0012(5).

(b) The Superintendent shall not make a finding that a person is not of good moral character and reputation solely for the reason that the person has been convicted of a crime, but shall consider the relationship of the facts that support the conviction and all intervening circumstances as they relate to the specific occupational standards and requirements; and

(c) If the prospective teacher has been convicted of a crime listed in subsections (8)(A) and (8)(B) of this rule, the Superintendent shall request a letter of recommendation from the employing school and the individual's most recent employer, parole officer, or other appropriate professional source. The Superintendent shall fully consider such recommendation along with all other supporting materials submitted by the prospective teacher.

(9) The school shall set minimum expectations and provide training for all instructional personnel and supervisors of instructional personnel in:

(a) Curriculum and Instruction — including the educator's competent application of:

ADMINISTRATIVE RULES

- (A) The school approved curriculum, and
- (B) Effective teaching strategies; and
- (b) Supervision and Evaluation of Students - including the educator's responsibility to:

- (A) Record progress of individual students,
- (B) Evaluate student performance, and
- (C) Use effective classroom management;
- (c) Ethics — including the educator's responsibility to:
 - (A) Know, respect, and obey all policies of the school,
 - (B) Exemplify personal integrity, ethics, and honesty,
 - (C) Keep student information confidential, and
 - (D) Avoid exploiting students for personal profit or advantage.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0018 Recordkeeping

(1) Schools must furnish each prospective student, and have evidence of receipt acknowledged by student signature, with the following:

(a) A copy of the school's most recent catalog/bulletin, with any supplements and/or correction sheets with volume or date indicated, prior to or in conjunction with the applicant signing an enrollment agreement;

(b) A copy of the student's signed enrollment agreement;

(c) Upon request of the student, completion and placement data for students enrolled in the program for the last two years; and

(d) Upon request of the student, a copy of the Oregon Revised Statutes and Oregon Administrative Rules that govern Private Career Schools.

(2) Schools shall maintain a file for each student that must include:

(a) A statement signed by the student at the time of enrollment certifying receipt of a catalog and all other pertinent material;

(b) A copy of the student's signed enrollment agreement;

(c) Written progress reports that shall include information on how the student is progressing in areas such as classroom attendance and performance (but not used as final grades) updated at appropriate intervals;

(d) A copy of the results of any enrollment evaluation or examination;

(e) Student information that shall include:

(A) Legal name of the student;

(B) Address;

(C) Telephone number;

(D) Student identification number assigned, if any;

(E) Social security number (if student signs disclaimer);

(F) Date of birth;

(G) Dates of attendance (beginning and ending dates);

(H) Course or program of instruction; and

(I) Date of transfer if appropriate; and

(f) The student file must be maintained for a minimum of 3 years after the student has completed or withdrawn.

(3) Upon the student's satisfactory completion of instruction, schools shall:

(a) Issue an appropriate certificate or diploma; and

(b) Issue appropriate educational transcripts that shall include, but are not limited to:

(A) School name and location;

(B) Student's name;

(C) First and last date of attendance;

(D) Specific program(s) taken;

(E) Clock or credit hours;

(F) Grade for each subject;

(G) Name of accrediting agency, if the school is accredited.

(H) Statement indicating the school maintains transcripts for a minimum of 25 years; and

(I) Signature of the appropriate school official with school seal (if any) and date of issue.

(4) Schools shall maintain and issue transcripts as follows:

(a) Store transcripts in a safe, vault or file having a minimum one-hour fire-safe rating unless duplicate records are kept in a safe location outside the school building. The address of locations outside the school building must be on file with the Department;

(b) Keep transcripts of all former students that include the information described in subsection (3)(b)(A-H) of this rule for a period of no less than 25 years from date of termination of enrollment. Transcripts must be stored under the same conditions as described in section (4)(a) of this rule;

(c) Make a student's records available to the student upon request.

Availability of records shall comply with the "Family Educational Rights and Privacy Act" (Public Law 93-380 as amended by Public Law 93-568).

The educational institution shall respond within a reasonable period of time, but not more than 45 days after receipt of the request.

(d) Deliver to the Superintendent all permanent student transcripts for safekeeping if the school should cease to operate. The Superintendent will maintain the transcripts of all closed schools. If available, certified copies of the transcripts will be provided, when a written request signed by the student, is received at the Department. A non-refundable search fee of \$10 must accompany the request.

(e) A school may withhold an official transcript, certificate of completion, and/or diploma if the student has any outstanding debt owed to the school. Forms, letters, questionnaires, or other material printed or written for the purpose of debt collection must clearly and conspicuously state that they are used for the purpose of attempting to collect a debt or attempting to obtain information concerning a debtor.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0019 School Catalogs

(1) A school catalog shall include the following. If any of the following items do not appear in the body of the catalog, a reference to other specific documents where the required information appears must be in the catalog:

(a) Name and address of the school;

(b) Date of publication or other reference identifier such as year(s), volume or edition, or version numbers, etc.;

(c) Admission requirements and procedures;

(d) The educational or vocational objective of each program including the name and level of occupations for which the course or program purports to train;

(e) The number of clock or credit hours of instruction in each course and the length of time in weeks or months normally required for completion;

(f) A complete listing and description of courses offered specifying subjects included in each program that clearly identifies coverage of the training. If for the purpose of continuing education and/or self-improvement they must be identified as such;

(g) A description of the school's physical facilities and equipment available for student use;

(h) Policies relating to tardiness, absences, makeup work, conduct, standards of progress, termination, reentry, and other rules and regulations of the school, including a student appeals process;

(i) The grading system, including definition of ratings and credit units, if any;

(j) The requirements for graduation or completion;

(k) A statement describing certificates, diplomas, or degrees awarded upon graduation;

(l) The total cost of tuition and registration fee and other charges related to enrollment such as deposits, fees, books and supplies, tools and equipment, and other charges for which a student may be responsible. This information may be presented as an addendum or insert to the main publication;

(m) The state refund policy or the school's refund policy if determined by the Superintendent to be more favorable to the student;

(n) A description of the extent and nature of placement assistance provided to students and/or graduates, including but not limited to job search techniques, resume writing, job interview techniques, and the assistance the school provides in establishing job contacts/interviews for graduates;

(o) Specifics describing the availability of student housing, counseling, and other student services, if any;

(p) A school calendar including beginning and ending dates of classes and programs, holidays, and other dates of importance that are reasonably likely to affect the decision of the potential student;

(q) A clear and conspicuous disclosure of the student's cancellation rights; and

(r) A student grievance policy, which includes this statement: "students aggrieved by action of the school should attempt to resolve these problems with appropriate school officials. Should this procedure fail students may contact: Oregon Department of Education, Public Service Building, (use current address), Salem, OR 97310-0203." After consultation with appropriate Department staff and if the complaint alleges a violation of Oregon Revised Statutes ORS 3345.010 to 345.470 or standards of the Oregon Administrative Rules 581-045-0001 through 581-045-0210, the Department will begin the complaint investigation process as defined in OAR 581-045-0023 Appeals and Complaints.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

ADMINISTRATIVE RULES

581-045-0023

Appeals and Complaints

(1) Each school shall implement a process for the prompt resolution of a complaint by a student of the school. Unless specifically provided by state or federal law or administrative rule, the decision of the school shall be final.

(2) Complaints filed on behalf of or by a student against a school must be postmarked within one year of the student's last date of attendance.

(3) If the complaint alleges a violation of Oregon Revised Statutes, ORS 345.010 to 345.470 or standards of OAR 581-045-0006 through 581-045-0210, the complainant may direct an appeal to the State Superintendent of Public Instruction, after exhausting the school's procedures or after 45 days from filing a written complaint with the school, whichever occurs first. The appeal shall be in writing and shall contain:

(a) The complainant's name, address, and phone number;

(b) School name, address, and phone number;

(c) A brief statement indicating which statute or rule the school is alleged to have violated and how the school is alleged to have violated it, e.g., failure to refund tuition, failure to provide a portion of the program described in the enrollment agreement;

(d) Facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, financial loss, if any, and any other pertinent information;

(e) An explanation of what efforts have been taken to resolve the problem with the school, if any; and

(f) Copies of pertinent documents, such as the enrollment agreement, catalog and advertisements.

(4) After receipt of a complaint or other allegation that a school has failed or is failing to comply with the provisions of any laws or rules, the Superintendent shall investigate the facts surrounding the allegations.

(5) The Superintendent shall notify the complainant and the school of the findings resulting from the investigation.

(6) The Superintendent may impose penalties as defined in OAR 581-045-0190 if the school is found to be in violation of any standard or rule.

(7) Sections (1) and (2) of this rule do not limit the statutory authority of the Superintendent to investigate schools regardless of receiving allegations from the public.

(8) At the request of the Superintendent, complaints may be resolved with the assistance of such other parties as the Oregon Student Assistance Commission, Oregon Department of Justice, U.S. Department of Education, and other appropriate organizations and/or individuals.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0026

Cancellation and Refund Policies: Resident Instruction

(1) A student may cancel enrollment by giving written notice to the school. If notice occurs:

(a) Within five business days of the date of enrollment, all monies paid shall be refunded; or

(b) After five business days of the date of enrollment and prior to the commencement of classes, the school may retain only the published registration/application fee. Such fee shall not exceed 15 percent of the total tuition cost, or \$150, whichever is less.

(2) If training is terminated by the student or the school after commencement of classes, unless the school has discontinued the program of instruction, the student is financially obligated to the school according to the following formulas or maximum charges:

(a) If a student withdraws prior to completion of 50 percent of the contracted instructional program, the student shall be entitled to a pro rata refund of the tuition charged and paid for such instructional program, less registration/application fees, supply fees, and any other legitimate charges owed by the student;

(b) If a student withdraws upon completion of 50 percent or more of the contracted instructional program, the student shall be obligated for the tuition charged for the entire instructional program and shall not be entitled to any refund;

(c) The term "Pro rata refund" means a refund of tuition paid for that portion of the program beyond the last recorded date of attendance. The date for determining that portion shall be the published class schedule and the last recorded date of attendance by the student; and

(d) To calculate charges under subsections (2)(a) through (c) of this rule:

(A) When a program is measured in clock hours, the portion of the enrollment period for which the student will be charged is determined by dividing the total clock hours into the number of clock hours accrued according to the published class schedule as of the last recorded day of attendance by the student;

(B) When a program is measured in credit hours, the portion of the enrollment period for which the student will be charged is determined by dividing the total number of weeks into the number of weeks accrued according to the published class schedule as of the last recorded day of attendance by the student; and

(C) For other measurements of time such as days, weeks, or months, the portion of the enrollment period for which the student will be charged is determined by dividing the total number of weeks or months into the number of weeks or months accrued according to the published class schedule as of the last recorded day of attendance by the student.

(3) In calculating charges under subsections (2)(a) through (d) of this rule:

(a) The term "tuition cost" shall include direct tuition charges including any lab fees. The school shall adopt and publish policies regarding credits issued for the return of resalable books and supplies and/or the proration of user fees, other than lab fees;

(b) The school shall not charge a withdrawal fee of more than \$25;

(c) Any refund shall be calculated on the basis of the published class schedule using the last day of actual attendance as the termination date. The student shall not be charged for a leave of absence, granted according to the school's written attendance policy in the calculation of refunds;

(d) The school may adopt and apply refund calculations more favorable to the student than those described under subsections (2)(a) through (d) of this rule.

(4) When a cancellation, termination or completion occurs, a calculation of all allowable charges under sections (1), (2) and (3) of this rule shall be made, using the last recorded date of attendance as a baseline. If such calculations evidence that the school received total payments greater than its allowable charges:

(a) Within 40 days after notification of such cancellation, termination or completion, a written statement showing allowable charges and total payments received shall be delivered to the student by the school, together with a refund equal in amount to monies paid to the school in excess of those allowable charges;

(b) In the event payments to a student account are derived from federal and/or state tuition assistance program(s), including student loan programs, regulations governing refund notification and awarding within respective program(s) shall prevail in lieu of subsection (4)(a) of this rule, but only with respect to the covered portions thereof; and

(c) In the event payments to a student account are derived from a sponsoring public agency, private agency or any source other than the student, the statement of charges and payments received together with an appropriate refund described under subsection (4)(a) of this rule may be delivered instead to such party(ies) in interest, but only with respect to the covered portions thereof.

(5) In case of illness or disabling accident, death in the immediate family or other circumstances beyond the control of the student that causes the student to leave school, the school shall arrange a prorated tuition settlement that is reasonable and fair to both parties.

(6) A school shall be considered in default of the enrollment agreement when a convened and functioning course or program is discontinued or canceled or the school closes prior to completion of contracted services. When a school is in default, student tuition may be refunded by the school on a pro rata basis. The pro rata refund shall be allowed only if the Superintendent determines that the school has made provision for students enrolled at the time of default to complete a comparable program at another institution. The provision for program completion shall be at no additional cost to the student in excess of the original contract with the defaulting school. If the school does not make such provision, a refund of all tuition and fees shall be made by the school to the students.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 24-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 41-1990, f. & cert. ef. 7-10-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0032

Standards for Financial Reporting

(1) All private career schools shall submit at initial licensing, and annually thereafter in conjunction with the license renewal, financial information reflecting the fiscal condition of the school at its start-up or at the close of its most recent fiscal or calendar year, whichever is applicable. For such purposes the information submitted shall conform to the following:

(a) At initial application for licensing, the school must submit a business plan based on the major goals of the school for the first two years of operation along with the methods and procedures for achieving the goals. Included as part of the plan will be an opening balance sheet. The school shall have sufficient capital to provide all the appropriate instruction, sup-

ADMINISTRATIVE RULES

port and administrative services (including appropriate comprehensive general liability insurance), staffing, equipment and facilities. The Superintendent will use financial ratios found in such sources as "Almanac of Business and Industrial Financial Ratios," accrediting organizations, and other appropriate financial statistics to determine the sufficiency of the planned capital. The plan also shall include a projected income statement showing the projected income and expenses for each of the first two years of operation;

(b) In addition to the licensing requirements cited in subsection (1)(a) of this rule, financial requirements shall be based on a school's ability to fulfill its obligations to students, meet refund obligations, meet operational expenses and other financial obligations, and make the required contributions to the existing tuition protection fund;

(c) The financial report for license renewal shall be prepared in accordance with the Generally Accepted Accounting Principles (GAAP), Generally Accepted Audit Standards (GAAS), and Statements on Standards for Accounting and Review Services (SSARS) in effect on January 1, 1996. Such report shall cover the most recent annual accounting period completed. The balance sheet information must clearly show all assets, liabilities and net worth, while the income statement must clearly show the profit and/or loss for the fiscal or calendar year. Each school also must provide a cash flow statement showing its:

- (A) Cash flow from operations;
- (B) Cash flow used in investing; and
- (C) Cash flow from financing activities.

(d) The information for license renewal must also show total instructional income and expense for the school for the preceding fiscal or calendar year and clearly identify gross tuition income from which license fees and tuition protection fund assessment will be computed. The amount of the tuition protection fund assessment required for an initial license will be computed on the basis of projected first year tuition income but shall not be less than a liability limit of \$5,000;

(e) At the option of the school, the financial report may be in the format provided by the Superintendent;

(f) Each school must certify in its financial report that all refunds due students have been made and are not in default;

(g) In all instances, information supplied must be certified true and correct by the school owner or an authorized representative; and

(h) Schools that are accredited and offer students Title IV financial aid shall submit an audited financial report signed by an independent certified public accountant.

(i) Schools reporting gross tuition income over \$15,000 will submit a financial report completed and signed by a licensed Public Accountant (PA) or Certified Public Accountant (CPA).

(2) If after analyzing a school's financial reports and records, the Superintendent determines the school is not financially responsible or that the school's records are incomplete or inaccurate, the Superintendent may require the school to submit within 75 calendar days of written notice:

(a) An audited financial report signed by an independent certified public accountant; and

(b) Its most recent federal and state income tax reports.

(3) The Superintendent may waive or modify all or part of the requirements in sections (1) and (2) of this rule for schools offering prelicense programs or courses.

Stat. Auth.: ORS 345.325(8)

Stats. Implemented: ORS 345.325

Hist.: 1EB 34-1978, f. & ef. 10-5-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0016 by ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0065

Inspection and Periodic Review

(1) A school shall provide the Superintendent or qualified designee access to all information, records, physical facilities, school employees, and other parties (including advisory groups, administrators, students and graduates) as may be necessary to verify compliance with Oregon Revised Statutes, ORS 345.010 to 345.450, or standards of OAR 581-045-0001 through 581-045-0210.

(2) A school shall permit the Superintendent or designee to conduct an investigation or on-site review of the school with or without notice. When requested, the school must provide the Superintendent or designee with true and accurate information including but not limited to records and documents.

(3) A school located in Oregon may be inspected on an annual basis or as the Superintendent determines necessary.

(4) A school may be reviewed to determine whether the school has and is adhering to policies and procedures in such areas as its programs, services and staff conduct.

(5) Whenever an inspection or other investigation reveals lack of compliance with Oregon Revised Statutes, ORS 345.010 to 345.450 or standards of OAR 581-045-0001 through 581-045-0210, the Superintendent may officially notify the school by certified mail that the school has been placed on probation and send the school a report of deficiencies. When deemed appropriate the Superintendent may initiate immediate license suspension or revocation proceedings and schools will be provided due process through the provisions allowed in subsection (5)(c) of this rule. If the Superintendent elects to place the school on probation, the school shall have 20 calendar days after date of notification to report on actions that have been taken to correct these deficiencies:

(a) The school's response shall indicate corrective action taken and/or a program improvement plan for correcting any remaining deficiencies;

(b) If violations cited are not corrected, or if a program improvement plan submitted to correct the violations is not acceptable to the Superintendent, the Superintendent shall send notice to revoke or suspend the school's license;

(c) The school may request a hearing within 20 calendar days of receipt of the Superintendent's notice to revoke or suspend the school's license; and

(d) A school whose license has been placed on suspension shall not be permitted to engage in any advertising, recruitment or student enrollment activities, or begin the instruction of any new students during the period of suspension.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0068

Reporting Obligations

(1) Schools must notify the Superintendent within 10 days of receipt of a notice from any source that involves

(a) Action against the school; or

(b) Action against owners, directors, administrators, agents, supervisors, and instructors subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450, including but not limited to disciplinary, licensure, legal, or conviction of any crime and that might affect the person's ability to fulfill the assigned responsibilities.

(2) Upon request of the Superintendent or designee, the school must provide the Superintendent or designee with truthful and accurate information regarding the disciplinary action, licensure action, legal action, or conviction of any crime referenced in OAR 581-045-0068(1)(b).

(3) Schools must provide the Superintendent with a copy of any notice of warning, if such notice indicates the school is in immediate jeopardy of losing recognition from that agency, or any notice of suspension or revocation received from any national, regional or state accrediting and/or approval agency within 10 days of receipt of such notice. The school shall at the same time inform the Superintendent in writing of actions being taken to correct the deficiencies cited.

(4) In the event of a school name change, the school shall submit to the Department legal documents from the Secretary of State's office that validates the name change.

Stat. Auth.: ORS 345.080

Stat. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0200

Barbering, Hair Design, Facial Technology, and Nail Technology

In addition to OAR 581-045-0001 through 581-045-0190, schools of barbering, hair design, facial technology, and nail technology shall comply with this rule and OAR 581-045-0210.

(1) Minimum hourly training requirements:

(a) For hair design, 1,450 hours;

(b) For barbering, 1,100 hours;

(c) For facial technology, 250 hours;

(d) For nail technology, 350 hours; and

(e) In addition to the programs listed above, students are required to successfully complete the following requirements once:

(A) Safety and sanitation, 150 hours; and

(B) Career development, 100 hours.

(2) Individual progress records must be regularly maintained for the purpose of monitoring each student's progress through the instructional program and verifying actual hours of instruction in each certifiable classification. Once a student completes the state minimum and the school program requirements, the school shall administer a Department-approved written and practical exam prior to the student taking the State Board exam for licensure. The time required to take the practical exam shall be included as part of the contracted program hours included in the tuition cost.

ADMINISTRATIVE RULES

(3) The Department, with the assistance of a curriculum committee, will develop minimum standards for each certificated program or any combination of programs.

(4) No student shall perform any task in a clinic lab without first having achieved verifiable minimum competence. The following hours are recommended as a guideline for classroom and laboratory instruction that students should experience prior to any assignment in the clinic lab:

- (a) Hair design, 160 hours;
- (b) Facial technology, 40 hours;
- (c) Nail technology, 40 hours; and
- (d) Barbering, 100 hours.

(5) The instructional program shall determine the type of assignments students will receive in the clinic lab. Clinic lab assignments should, as nearly as possible, reflect the emphasis of the student's current and cumulative theory and laboratory experiences. Schools shall establish a minimum and maximum number of clinic activities for each type of task required in the clinic lab. These minimums/maximums should show a comparable distribution of activities reflective of industry practice. Only when students have completed the minimum in all areas can they be assigned to clinic activities in excess of the maximums.

(6) As an alternative to section (1) of this rule a competency-based training program that is self-paced may be approved by the Superintendent when the school has developed written requirements which it administers for graduation including:

(a) Clearly defined student performance objectives that measure levels of performance at each level of instruction for each skill/task and knowledge required for students to successfully pass the appropriate practitioner certificate examination and successfully and safely perform on members of the public all services allowed in the certificate classifications;

(b) Individual progress records maintained for the purpose of monitoring each student's progress through the instructional program and recording/verifying actual hours of instruction and performance achievement by each student;

(c) A curriculum design, which the Superintendent determines to be comparable to the Board adopted model curriculum, showing a logical progression of academic and practical training experiences leading to the levels of student performance required for graduation and certification;

(d) The identification of specific levels of competence to be achieved by each student prior to any clinic lab experience that will ensure students have achieved sufficient skill and knowledge to successfully and safely perform assigned tasks on members of the general public;

(e) A diagnosis of each student's beginning level of competency and a prescriptive instructional program for specific competency completion with projected timelines resulting in an estimated program completion date; a copy to be given to the student on commencement of the program and on file in the student's personal file. Revisions to the prescriptive program must be based on recorded performance evaluations and as a result of school/student negotiation. Copies of revisions must be given to the student and on file in the student's academic file;

(f) Assurances that the instructional program will determine the type of assignments that students receive for the clinic lab; that, as nearly as possible, the clinic lab assignments reflect the emphasis of the student's current and cumulative theory and laboratory experiences;

(g) School catalogs and/or student enrollment agreements, that show the average time for students to complete the requirements for the various certificate programs during the previous reporting period;

(h) An annual report at the time of relicensing to the Department showing the actual total hours of instruction received by each student who has completed or left the school during the previous reporting period;

(i) Assurances that no student's competency based prescriptive training program will be significantly altered or regulated in any way, once the student and the school administration have signed a competency based agreement; and

(j) When the school informs a student that he/she is competent, the student may elect to leave the school with a diploma at that time or stay in school until he/she has been trained for an amount of time equal to the training hours listed in section (1) of this rule, and no additional tuition may be charged. The student shall notify the school of his/her decision within two weeks of notice of competency.

(7) With the exception of the teacher training program in section 25 of this rule, a school shall not conduct both fixed-hour and student competency-based training programs in the same school facility concurrently unless the school is in transition from one training program to another. The Department may set a time limit in which the transition must be completed.

(8) No school shall enroll a student wishing to transfer hours from a school of barbering, hair design, facial technology, and nail technology in Oregon or out-of-state without first receiving an official transcript proper-

ly signed and/or sealed directly from the previous school(s). A school may admit a student on a temporary basis without receiving an official transcript. In no event should a student be considered a graduate until an official transcript from a prior school(s) is in the graduating school's student file. Schools shall evaluate and grant appropriate credit for any education and training students received at state regulated postsecondary schools.

(9) Schools shall validate only their own hours of instruction provided a student but not any hours provided by other schools.

(10) Upon receipt and evaluation of official transcripts from schools previously attended:

(a) Schools shall give full credit for hours earned within the last ten years; and

(b) Schools may grant credit for hours earned prior to the last ten years, if approved by the Superintendent.

(11) No school shall deny a student a record of hours earned. A record of hours does not infer or include the official transcript.

(12) Schools shall have the following staff present in the facility at all times:

(a) 1-15 students present — one approved teacher;

(b) 16-30 students present — two approved teachers; and

(c) One additional approved teacher for each additional 20 students or part thereof. Teachers must be certified in all areas they teach and supervise. When only one teacher is present at the school, clinic lab operations, and classroom instruction shall not occur simultaneously. The lone teacher shall conduct and supervise one or the other but not both concurrently. Teachers who supervise the clinic lab and/or approve student practical performance must be certified in all areas they supervise or approve.

(13) The minimum teaching staff, as set forth in these rules, shall not perform administrative or financial aid or any other non-instructional duties during the time that the clinic lab and classroom instruction are taking place concurrently.

(14) A teacher or student teacher shall not perform any services in the school at any time except for teaching purposes.

(15) Schools may use resource persons who are not approved teachers for enrichment of instruction.

(a) Maximum time limits for resource persons are:

(A) Hair design, 340 hours,

(B) Facial technology, 100 hours,

(C) Nail technology, 100 hours, and

(D) Barbering, 270 hours; and

(b) Instruction by resource persons, if provided outside the school premises, must be supervised by a certified teacher.

(16) All services performed by students shall take place under the supervision and direction of a certified teacher.

(17) Premises shall be used during school hours only for instructing students and teacher trainees in barbering, hair design, facial technology, or nail technology.

(18) The school shall provide a minimum of 2,800 square feet of total floor space to be allocated as follows: one work station for each of the first twenty students; one additional work station for every five students in excess of twenty; and, where hair design is taught, one shampoo bowl for every five work stations. The superintendent must approve any exception to this requirement. Classroom and clinic space are in compliance with OAR 581-045-0022. Schools must comply with ORS 345.240 relative to accessibility of programs for persons with handicapping conditions.

(19) The Superintendent may approve a facility of less than 2,800 square feet of floor space for schools if the school presents a written plan as to how the number of students will be served in the space provided. The plan must include how the school meets the entire model curriculum standards.

(20) The school shall be separated from adjoining rooms used for another business or for domestic purposes, by means of walls or substantial partitions extending from floor to ceiling; all doors leading to the school from the aforesaid adjoining rooms must be kept closed. Access to the school shall be provided by means of an outside or separate entrance, or from a public passageway in a public building.

(21) Currently, certified practitioners of barbering, hair design, facial technology or nail technology may be approved by the Department to teach subjects or programs directly relating to their certified classification(s) if they:

(a) Have graduated from high school as evidenced by a photocopy of a high school transcript or high school diploma or, as an alternative, the obtaining of a General Education Development (GED) certificate;

(b) Are at least 18 years of age as evidenced by a photocopy of a birth certificate, driver's license, or baptismal certificate;

(c) Have completed the Standard Course of Study as set forth in section (25) of this rule unless they meet the requirements as set forth in subsection (22)(d) of this rule;

ADMINISTRATIVE RULES

(d) Hold all Oregon licenses, certificates, and ratings legally required for employment in the field in which they teach. The teacher requirements found in OAR 581-045-0012, apply, if the applicants:

(A) Have at least one year of work experience as a certified practitioner in the subject in which they instruct, following certification or licensure. The work experience and the training for certification or licensure must equal a minimum of two years; or

(B) Have completed an approved teacher training program; and

(e) Provide evidence to the satisfaction of the Superintendent that the requirements of this section have been met; and

(f) Submit the \$50.00 registration fee.

(22) Each school shall include the names of all actively employed (full-time or part-time) approved teachers on its annual license renewal application.

(23) Continuing education of teachers shall be required to maintain approval:

(a) A teacher may maintain registration status by completing 30 clock hours of continuing education approved by the Superintendent within every 36-month period following that teacher's first date of common teacher registration (including any period of time from the actual date of registration until the first date of common teacher registration); and by completing 30 clock hours of approved continuing education within every 36-month period thereafter, even if the teacher is not teaching for all or a portion of each three year period. The common teacher registration dates are from August 1 until July 31. Only 10 of the 30 clock hours may be from an authorized manufacturer or distributor show;

(b) The Department shall, in conjunction with the state advisory committee, approve courses for which continuing education credit will be allowed;

(c) Proof of completion of the requirements of subsection (24)(a) of this rule, and the \$25.00 renewal of registration fee, must be submitted to the Superintendent prior to each teacher's next date of registration; and

(d) An individual failing to comply with the requirements of subsection (24)(a) of this rule shall not be approved for registration renewal or for a new registration until such requirements have been met.

(24) A licensed school of barbering, hair design, facial technology, or nail technology may offer a teacher training program if it complies with the following:

(a) Courses of teacher training for instruction in barbering, hair design, facial technology, and nail technology may be offered only in a school of hair design licensed under the provisions of ORS Chapter 345 or Mt. Hood Community College. Courses of study must be submitted to the Superintendent for approval.

(b) The Standard Course of Study shall require 1,000 hours of instruction that shall include the following:

(A) Preparation and use of lesson plans;

(B) Use of audiovisual and other instructional aids;

(C) Development and administration of tests and evaluation of test results;

(D) Evaluation and recording of student progress, and recording of attendance;

(E) Observation of practical demonstrations;

(F) Assisting with practical demonstrations;

(G) Setting up and performance of practical demonstrations, and

(H) Practice teaching;

(c) The Superintendent shall approve teacher-training programs of 200 hours for:

(A) Teachers whose certification has lapsed more than three years; and

(B) Teachers from other states whose licensing requirements are less than the minimum requirements for Oregon.

(d) The school shall:

(A) Maintain daily records of the teacher trainee's attendance, and the subject matter covered; and

(B) Conduct and record the results of periodic evaluations of each teacher trainee;

(e) The school may evaluate and give up to 500 hours credit for professional teaching experience or any academic training received in a community college or institution of higher education when that academic training contributes to achievement of the total approved Standard Course of Study;

(f) A school shall not have more than three approved teacher trainees at one time. The school shall designate who shall have the principal supervisory responsibility for the student in the teacher-training program. Each trainee, when in the clinic lab, must be under direct supervision of an approved teacher with a minimum of two years teaching experience;

(g) Teacher trainees shall evaluate students only under the direct supervision of a certified teacher; and

(h) Teacher training students must be registered with the Superintendent prior to commencement of their training.

Stat. Auth.: ORS 345.400, 345.460, ORS 345.470

Stats. Implemented: ORS 345.400, 345.460

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

Adm. Order No.: ODE 1-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 10-1-03

Rules Amended: 581-015-0075, 581-015-0126, 581-015-0900, 581-015-0935, 581-015-0938, 581-015-0940, 581-015-0960, 581-015-0964, 581-015-0968, 581-015-0970, 581-015-0972, 581-015-0980, 581-015-0990

Subject: Prior Written Notice, Standards for Approval of Private Schools as Contractors with Public Agencies, Definitions - EI/ECSE Program, Surrogate Parents for EI/ECSE, Parent Consent for EI, Prior Written Notice and Notice of Procedural Safeguards (EI/ECSE Program), EI and ECSE Transition, Parent Participation - EI/ECSE Program, IFSP Meeting Procedures and Timelines, IFSP Content, IFSP Team Consideration and Special Factors, Participants for IFSP Team Meetings and Reviews, Implementation of the IFSP

If you have any questions regarding a rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail suzy.harris@state.or.us. For a copy of a rule, please contact Debby Ryan at (503) 378-3600, ext. 2358 or e-mail debby.ryan@state.or.us

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-015-0075

Prior Written Notice

(1) Prior written notice shall be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(2) Prior written notice must be given after a decision is made and a reasonable time before that decision is implemented.

(3) The content of the prior written notice shall include:

(a) A description of the action proposed or refused by the school district;

(b) An explanation of why the district proposed or refused to take the action;

(c) A description of any options that the school district considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors that is relevant to the school district's proposal or refusal; and

(f) A statement that the parents of a child with a disability have procedural safeguards and the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

(4) The prior notice shall be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule has been met.

(6) If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.

Stat. Auth.: ORS 343.045, 343.155 & 343.157

Stats. Implemented: ORS 343.157, 343.227, 343.045, 343.155, 20 USC § 1401(a) & 34 CFR 300.7(b)

Hist.: IEB 18-1979(Temp), f. & ef. 11-15-79; IEB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 18-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

ADMINISTRATIVE RULES

581-015-0126

Standards for Approval of Private Schools as Contractors with Public Agencies

(1) Private schools that intend to provide early intervention (EI), early childhood special education (ECSE) or special education under a written agreement with a public agency, shall apply annually to the Department's Office of Special Education for approval.

(2) The annual application shall include documentation that the private school meets:

- (a) The applicable fire codes of the local or state fire marshal;
- (b) Facility occupancy and use standards set forth by the appropriate local building inspectors;
- (c) Health standards of the county health department; and
- (d) The requirements set by:
 - (A) OAR 581-022-1420 (emergency plans and safety programs);
 - (B) OAR 581-022-1430 (asbestos management plans); and
 - (C) OAR 581-022-1440 (infectious diseases).

(D) In place of requirements (A), (B), and (C) above, private schools providing EI/ECSE services only may submit documentation that the private school meets the safety requirements set by the Child Care Division of the Oregon Department of Employment.

(e) The private school shall maintain commercial general liability insurance with policy limits of at least \$500,000. The private school shall provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.

(3) The annual application shall include assurances, on a form provided by the Department, that the private school:

(a) Uses curriculum content, teaching practices and management practices that do not violate the constitutional prohibition on religious entanglement;

(b) Implements the EI/ECSE or special education services as described in each child's individualized family service plan or individualized education program;

(c) Has procedures in place regarding staff hiring and evaluation that require:

(A) The careful checking of personal and professional references for all potential employees;

(B) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees;

(C) A regular schedule of staff evaluations of the competencies of all employees to work with children;

(D) In place of requirements (A), (B) and (C) above, private schools providing EI/ECSE services only may follow the hiring and evaluation requirements set by the Child Care Division of the Oregon Department of Employment;

(d) Maintains the confidentiality of student records consistent with the Family Educational Rights and Privacy Act, 34 CFR § 99 et. seq. and Oregon Administrative Rules relating to student records;

(e) Has a policy of nondiscrimination;

(f) Notifies the Department and the contracting public agency of any written complaint it receives concerning the EI/ECSE or special education programs and services being provided;

(g) Notifies the contracting public agency of the need for any change in a child's educational program and does not make changes in a child's individualized education program or individualized family service plan, the EI/ECSE or special education program or services, or placement, unless the contracting public agency consents to the changes; and

(h) Initiates and convenes individualized education program and individualized family service plan meetings only when this assistance is requested by a written agreement with the contracting public agency;

(i) Evaluates a child only when this assistance is requested by a written agreement with the contracting public agency;

(j) Provides licensed staff in compliance with either paragraphs (A) or (B) or both of this subsection:

(A) EI/ECSE: For private schools providing EI/ECSE for children preschool children, at least one individual who is qualified to provide EI/ECSE and meets the requirements of OAR 581-015-1100(2) and (3) shall be available to serve the population of students described in the application; or

(B) School Age: For private schools providing special education for school age children, at least one individual qualified to provide special education and licensed according to rules established by the Teacher Standards and Practices Commission shall be available to serve the population of students described in the application. Private schools may provide special education and related services to students with disabilities placed by public agencies by employing professionals who are licensed within their own specialties. Pursuant to OAR 584-036-0010, these personnel are not

required to hold licensure from the Teacher Standards and Practices Commission.

(k) Provides hours of instruction that meet state standards;

(l) Grants credit toward high school graduation consistent with OAR 581-022-1130 and 581-022-1350(2) and (3);

(m) Ensures that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and

(n) For school-age programs, meets the state curriculum standards set pursuant to OAR 581-022-1210.

(4) The annual application shall include a plan, on a form provided by the Department, describing the EI/ECSE or special education program for which the private school requests approval. The plan shall include the following elements:

(a) A description of the population to be provided EI/ECSE or special education programs or services; and

(b) A description of the specific EI/ECSE or special education programs or services that the private school provides.

(5) This rule does not apply to public agencies providing educational programs at treatment centers under ORS 581-015-0044.

(6) Private alternative schools registered under OAR 581-021-0072 do need to be approved under this rule if the contracting school district is providing the special education and related services identified in the child's IEP.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.041 & 343.221

Hist.: IEB 28-1978, f. & ef. 7-20-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0900

Definitions — EI/ECSE Program

For the purposes of OAR 581-015-0910 to 581-015-1125, the definitions in this rule and 581-015-0005 apply.

(1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility.

(2) "Communication" means receptive or expressive language development.

(3) "Contractor" means the agency designated by the Department to administer the provision of EI and ECSE within selected service areas.

(4) "Department" means the Oregon Department of Education.

(5) "Designated referral and evaluation agency" means the agency in each county designated to be the referral point for parents and others who suspect that a child may need early intervention or early childhood special education, and to be responsible for assuring that all referred children suspected of having a disability receive evaluation for potential eligibility for early intervention and early childhood special education.

(6) "Early childhood special education (ECSE)" means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings, or both.

(7) "Early intervention and early childhood special education assistants" means individuals who implement program activities under the direct supervision of the professional personnel.

(8) "Early intervention and early childhood special education specialists" means professionals who implement or coordinate the implementation of individualized family service plans.

(9) "Early intervention (EI)" means services for preschool children with disabilities from birth until three years of age that are:

(a) Designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child's development;

(b) Selected in collaboration with the parents;

(c) Provided:

(A) Under public supervision;

(B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and

(C) In conformity with an individualized family service plan.

(d) At no cost to parents; and

(e) Meet all applicable state requirements.

(10) "Educational records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by a primary contractor or subcontractor.

(11) "Evaluation" means the procedures used by qualified personnel to determine;

(a) A child's initial eligibility for EI or ECSE services;

(b) A child's continuing eligibility for EI or ECSE services; and.

ADMINISTRATIVE RULES

(c) The nature and extent of the EI services or ECSE and related services that the child needs.

(12) "Independent educational evaluation (IEE)" means an evaluation conducted by a qualified examiner who is not employed by the Department, the contractor, or subcontractor responsible for the child in question.

(13) "Individualized family service plan (IFSP)" means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services under this chapter.

(14) "Informed clinical opinion" means the acquisition and interpretation of multiple sources of information as part of the evaluation and assessment process. This includes evaluation and assessment results, observation reports, previous testing results, medical data, parent reports, and other evaluative information. A review of this information is used in forming a determination regarding current developmental status and the need for EI.

(15) "Instruction" means providing families with information and skills that support the achievement of the goals and outcomes in the child's IFSP and working with preschool children with disabilities in one or more of the following developmental areas: communication development, social or emotional development, physical development, including vision and hearing, adaptive development, and cognitive development.

(16) "Monitoring" means activities carried out by the Department and its contractors which measure the subcontractor's compliance with state and federal mandates for the provision of EI and ECSE.

(17) "Natural environment" means settings that are natural or normal for the child's age peers who have no disability.

(18) "Other services" means those services that may be provided to preschool children with disabilities and to their families that are not EI or ECSE services and are not paid for with EI or ECSE funds.

(19) "Parent" means a parent of a preschool child with disabilities and includes a natural or adoptive parent of a child, legal guardian, other than a state agency, an individual acting as a parent in the absence of a parent or guardian, or a surrogate parent who has been appointed in accordance with OAR 581-015-0935. A foster parent may be treated as a parent without being appointed as a surrogate parent if:

(a) Parental rights have been terminated by court order, and

(b) The foster parent:

(A) Has an ongoing or intended long-term relationship with the child;

(B) Is willing to make educational decisions; and

(C) Has no interest that would conflict with the interests of the child.

(20) "Periodic review" means a review of the IFSP for a child and the child's family. An EI or ECSE program or parent may request a review of the IFSP.

(21) "Physical development" means gross or fine motor development.

(22) "Preschool child with disabilities" means all children from:

(a) Birth until three years of age who are eligible for EI services under OAR 581-015-0946(3); or

(b) Three years of age to eligibility for public school who are eligible for ECSE services under OAR 581-015-0943.

(23) "Professional Development Plan" means a written document specifying the name of the employee, the position, current qualifications, current deficits, an accounting of steps to be taken to rectify deficits including timelines, persons responsible, and the final date by which the plan will be complete.

(24) "Public agencies" means school districts and public agency subcontractors for EI and ECSE.

(25) "Related services" includes transportation and such developmental, corrective, and other supportive services, including orientation and mobility services, speech language and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, counseling, social work services, parent counseling and training, school health services and medical services, as may be required to assist children with disabilities, three years of age until the age of eligibility for public school, to benefit from special education or early childhood special education and includes early identification and assessment of disabling conditions. Medical services shall be for diagnostic and evaluation purposes only.

(26) "Related services personnel" means professionals who consult, supervise, train staff, design curriculum, or implement related services.

(27) "Service coordination" means the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's EI program and to coordinate access to other services designated on the IFSP.

(28) "Subcontractor" means the agency or agencies selected by the contractor to provide services for EI and ECSE.

(29) "Supervision" means the activities carried out by the Department and its primary contractors to oversee the provision of EI and ECSE services.

(30) "Supervisors" means professionals who supervise and train staff, design curriculum, and administer EI or ECSE programs.

(31) The following words are defined in OAR 581-015-0005:

(a) "Assistive technology device";

(b) "Assistive technology service";

(c) "Children with disabilities";

(d) "Autism";

(e) "Communication disorder";

(f) "Deafblindness";

(g) "Emotional disturbance";

(h) "Hearing impairment";

(i) "Mental retardation";

(j) "Orthopedic impairment";

(k) "Other health impairment";

(l) "Specific learning disability";

(m) "Traumatic brain injury";

(n) "Visual impairment";

(o) "Consent";

(p) "Day";

(q) "Department";

(r) "General curriculum";

(s) "Health assessment statement";

(t) "Identification";

(u) "Individualized education program (IEP)";

(v) "Mediation";

(w) "Medical statement";

(x) "Native language";

(y) "Order";

(z) "Participating agency";

(aa) "Personally identifiable information";

(bb) "Placement";

(cc) "Private school";

(dd) "Regular school year";

(ee) "School district";

(ff) "Short term objectives";

(gg) "Special education";

(hh) "Specially designed instruction";

(ii) "Supplementary aids and services";

(jj) "Superintendent"; and

(kk) "Surrogate parent."

Stat. Auth.: ORS 343.465 – 343.534

Stats. Implemented: ORS 343.475

Hist: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0935

Surrogate Parents for EI/ECSE

(1) Each contractor or subcontractor serving a child participating in EI or ECSE shall ensure that the rights of the child are protected by appointing a surrogate parent when:

(a) The parent cannot be identified or located after reasonable efforts; or

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.

(2) In determining the need for a surrogate, the contractor or subcontractor shall consider whether it is likely to take any action regarding the child that would require notice under OAR 581-015-0940 to the parents.

(3) Each contractor or subcontractor shall secure nominations of persons to serve as surrogates. The contractor or subcontractor shall ensure that each person approved to serve as surrogate:

(a) Is not an employee of the contractor or subcontractor or any state agency;

(b) Is not an employee of any other agency involved in the early intervention, education or care of the child except for an employee of a non-public agency that only provides non-education care for the child;

(c) Does not provide EI/ECSE services to the child or to any family members of the child;

(d) Is free of any conflict of interest that would interfere with representing the child's early intervention or special education interests; and

(e) Has the necessary knowledge and skills to protect the special education rights of the child.

(4) An appointed surrogate parent shall have all of the special education rights and procedural safeguards available to the parent.

(5) A surrogate shall not be considered an employee of a contractor or subcontractor solely on the basis that the surrogate is compensated from public funds.

ADMINISTRATIVE RULES

(6) The duties of the surrogate parent are to:

(a) Protect the early intervention or special education rights of the child;

(b) Be acquainted with the child's disability and the child's EI or ECSE needs; and

(c) Represent the child in all matters relating to the identification, evaluation and assessment, IFSP services, or the provision of a free appropriate public education to the child receiving ECSE and any other EI/ECSE rights.

(7) A surrogate shall have the same rights granted to a parent in a hearing under OAR 581-015-1030 if the identification, evaluation, IFSP or placement of the child is contested.

(8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-015-0940 and ORS 343.521(20) and all of the information provided to the surrogate. The surrogate, alone, will be responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(9) The contractor or subcontractor may change or terminate the appointment of a surrogate when:

(a) The person appointed as surrogate is no longer willing to serve;

(b) The child's EI or ECSE is terminated;

(c) The child is no longer eligible for EI or ECSE services;

(d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

(e) A foster parent is identified who can carry out the role of parent under OAR 581-015-0900;

(f) The appointed surrogate is no longer eligible;

(g) The child moves to another subcontractor area; or

(h) The child is no longer a ward of the state.

(10) A person appointed as surrogate shall not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

(11) The contractor or subcontractor shall not appoint a surrogate solely because the parent is uncooperative or unresponsive to the EI or ECSE needs of the child.

Stat. Auth.: ORS 34, CFR 300.514, 343.155 & 343.045

Stats. Implemented: ORS 343.475 & 343.531

Hist.: EB 12-1993, f. & cert. ef. 3-25-93; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0938

Parent Consent for EI

(1) "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent;

(d) The parent understands that consent may be revoked at any time before the completion of the activity or action for which they have given consent. If a parent revokes consent, the revocation is not retroactive. A parent may revoke consent for evaluation or reevaluation that has not yet been conducted.

(2) The contractor or subcontractor shall obtain written parental consent before conducting an initial evaluation or reevaluation.

(3) Written parental consent shall also be obtained prior to the provision of EI services described in the IFSP. The parents of a child eligible for EI services shall determine whether they, their child, or other family members shall accept or decline any EI services, and may decline such a service after first accepting it, without jeopardizing other EI services. If the parents do not provide consent for a particular EI service or withdraw consent after first providing it, that service shall not be provided. The EI services for which parental consent is obtained shall be provided.

(4) If consent is not given, the contractor or subcontractor shall make reasonable efforts to ensure that the parent:

(a) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(b) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(5) If a parent of a child who has been identified as having a disability or who is suspected of having a disability refuses to grant consent for an initial evaluation of the child, the Department may request a hearing under OAR 581-015-1030.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0940

Prior Written Notice and Notice of Procedural Safeguards (EI/ECSE Program)

(1) Prior written notice shall be given to the parent or surrogate parent a reasonable time before the contractor or subcontractor initiates or changes, or refuses to initiate or change, the identification, evaluation, placement of the child; or

(a) The provision of appropriate EI services if the child is from birth to age three; or

(b) The provision of a free appropriate public education to the child if the child is three years of age to eligibility for public school.

(2) Prior written notice must be given after a decision is made and a reasonable time before the decision is implemented.

(3) The content of the prior written notice shall include:

(a) A description of the action proposed or refused by the contractor or subcontractor;

(b) An explanation of why the contractor or subcontractor proposed or refused to take the action;

(c) A description of any options that the contractor or subcontractor considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors that are relevant to the contractor's or subcontractor's proposal or refusal;

(f) A statement that the parents of a child with a disability have procedural safeguards and the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and

(h) For children in EI, a statement of the complaint procedures under OAR 581-015-0054, including a description of how to file a complaint and the timelines under those procedures.

(4) The prior notice shall be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the contractor or subcontractor shall take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

(6) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, Braille, or oral communication).

(7) If the proposed action requires prior written notice and written consent, the contractor or subcontractor may give notice at the same time it requests consent.

(8) Notice of Procedural Safeguards: Contractors and subcontractors shall provide notice of Procedural Safeguards as described in OAR 581-015-0079.

Stat. Auth.: ORS 343.465 – ORS 343.534

Stats. Implemented: 34 CFR 300.504 – 505, ORS 343.521, 343.527, 343.531

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0960

EI and ECSE Transition

(1) Transition from EI to ECSE or other services:

(a) Before a child reaches the age of eligibility for ECSE, the school district shall obtain parental consent for initial evaluation under OAR 581-015-0939 and conduct an initial evaluation under 581-015-0941.

(b) With the approval of the child's family and in accordance with OAR 581-015-0968, a transition meeting shall be held at least 90 calendar days, and at the discretion of the parties, up to six months before the child's third birthday and shall include:

(A) Discussions with and training of parents regarding future services, placements and other matters related to the child's transition;

(B) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting;

(C) A review of the child's program options for the period from the child's third birthday through the remainder of the school year; and

ADMINISTRATIVE RULES

(D) With parental consent, the transmission of information about the child to the early childhood special education subcontractor or other service provider, if different than the child's early intervention subcontractor including:

- (i) Evaluation and assessment information; and
- (ii) Copies of IFSPs that have been developed and implemented.

(c) For children eligible for ECSE services under OAR 581-015-0943, contractors or subcontractors shall initiate and conduct an IFSP meeting on or before the child's third birthday to:

- (A) Review and revise the IFSP;
- (B) Determine placement; and
- (C) Obtain parent consent for initial placement in special education.

This is the initial consent for placement in special education for school-age students.

- (2) Transition from ECSE to School-age Special Education Services:
 - (a) Before a child reaches the age of eligibility for public school, the district shall:

(A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-0051, conduct an evaluation and determine eligibility for school age special education services; or

(B) For children previously eligible in a disability category under OAR 581-015-0051, continue the child's eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.

(b) The school district and contractor or subcontractor shall hold a meeting during the year before the child is eligible to enter public school:

(A) To determine steps to support the child's transition from ECSE to public schooling or other educational setting; and

(B) For a child eligible for school age special education services, to develop an IEP that is in effect at the beginning of the school year.

Stat. Auth.: ORS 343.465 – 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; Administrative Correction 12-1-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0964

Parent Participation — EI/ECSE Program

(1) For a child under age three, contractors or subcontractors shall provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate EI services and transition to ECSE or other services. For IFSP meetings, contractors and subcontractors shall also follow requirements of OAR 581-051-0966.

(2) For a child age three and older, contractors or subcontractors shall provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child, the provision of a free appropriate public education and transition to school age or other services. For IFSP and placement meetings, contractors and subcontractors shall also follow requirements of OAR 581-015-0966.

(3) Contractors or subcontractors shall provide parents and other participants with a written notice of the meeting sufficiently in advance to ensure that parents and others will have an opportunity to attend. The written notice shall:

(a) State the purpose, time and place of the meeting and who will attend;

(b) Inform the parents that they or the agency may invite other individuals who they believe have knowledge or expertise regarding the child;

(c) Inform the parents of a child age three or older that the team may proceed with the meeting even if the parent is not in attendance; and

(d) Inform the parents of whom to contact before the meeting to provide information if they are unable to attend.

(4) The contractor or subcontractor shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including:

(a) For a child under age three, conducting the meeting in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so; and

(b) For a child age three and over, arranging for an interpreter for parents who are deaf or whose native language is other than English.

(5) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, instructional plans, or coordination of service provision if those issues are not addressed in the child's IFSP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response parent proposal that will be discussed at a later meeting.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 – 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0968

IFSP Meeting Procedures and Timelines

(1) Contractors or subcontractors shall conduct a meeting to develop an initial IFSP within:

(a) Forty-five calendar days from the date the child is referred for EI services; and

(b) Thirty calendar days from the date the child is determined eligible for ECSE services.

(2) Contractors or subcontractors shall initiate and conduct a meeting to review and revise the IFSP every 365 days to:

(a) Determine whether the annual goals for the child are being achieved; and

(b) Revise the IFSP as appropriate to address:

(A) Any lack of expected progress toward the annual goals and appropriate activities;

(B) The results of any reevaluation;

(C) Existing information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) Other matters.

(3) For a child under age three:

(a) Contractors or subcontractors shall initiate and conduct a review of the IFSP, with the participation of the child's parents consistent with OAR 581-015-0964 and 0966, every six months or more frequently if conditions warrant or if the family requests such a review.

(b) The purpose of this review is to determine:

(A) The degree to which progress on major outcomes or annual goals is being made; and

(B) Whether revision of major outcomes or goals or services is needed.

(c) This review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. However, if IFSP revisions are necessary, an IFSP meeting shall be conducted.

(4) Contractors or subcontractors shall initiate and conduct, with the approval of the child's family, an IFSP meeting to plan the child's transition to ECSE services or other preschool services at least 90 calendar days, and at the of the parties, up to six months, before the child's third birthday.

(5) For children eligible for ECSE services under OAR 581-015-0943, contractors or subcontractors shall initiate and conduct an IFSP meeting on or before the child's third birthday in accordance with OAR 581-015-0960.

(6) Contractors or subcontractors shall conduct an IFSP meeting if they believe that a change in the IFSP may be necessary to ensure the provision of appropriate EI services for a child under age three or a free appropriate public education to a child over age three.

(7) A parent may request a meeting at any time to review or revise the IFSP.

(8) In response to a parent request for IFSP meeting, the contractor or subcontractor shall hold an IFSP meeting within a reasonable time.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 – 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 15-2003, f. & cert. ef. 8-14-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0970

IFSP Content

(1) Contractors or subcontractors shall use IFSP forms and directions published by the Oregon Department of Education.

(2) Oregon Department of Education IFSP forms shall combine the content requirements for IEPs under: Part B of IDEA; IFSPs under Part C of IDEA; and IFSPs under ORS 343.521.

(a) Part B of IDEA

(b) IFSPs under Part C of IDEA; and

(c) IFSPs under ORS 343.521

(3) Each individualized family service plan shall contain:

(a) A statement of the child's present level of development, including how the child's disability affects the child's participation in appropriate activities for the child's age. For a child under age three, the statement must include present levels of physical development including vision, hearing and health status, cognitive development, communication development, social development and adaptive development. The statement shall be based on professionally acceptable objective criteria.

(b) A statement of major outcomes or annual goals and short-term objectives expected to be achieved for the child and family related to:

ADMINISTRATIVE RULES

(A) Meeting the child's needs that result from the child's disability to enable the child to participate in appropriate activities;

(B) Meeting each of the child's other developmental needs that result from the child's disability.

(c) For a child under age three, a statement of the specific early intervention services to be provided for the child and to the family to advance toward attaining the major outcomes or annual goals.

(d) For a child age three, a statement of early childhood special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To participate in appropriate activities and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and nondisabled children.

(e) With concurrence of the family, a statement of the family's resources, priorities, concerns and goals related to enhancing the development of the child.

(f) The projected dates for initiation of services and modifications and the anticipated frequency, location, intensity, method and duration of the services and modifications described in subsection (3)(d) of this rule and the payment arrangements, if any.

(g) The name of the service coordinator from the profession, including service coordination, most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable EI/ECSE responsibilities) responsible for coordinating the involvement of the family and agencies in implementing early intervention and other services. The contractor or subcontractor may:

(A) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation; or

(B) Appoint a new service coordinator.

(h) For a child under age three:

(A) The natural environments in which early intervention services will be provided; and

(B) A justification of the extent, if any, to which services will not be provided in a natural environment.

(i) For a child age three and older, an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities described in subsection (3)(d) of this rule.

(j) A statement of:

(A) How the progress toward major outcomes or annual goals will be measured, including the criteria, procedures and timelines used to determine:

(i) The degree to which progress toward achieving the outcomes or goals is being made; and

(ii) Whether revisions of the outcomes or goals or services are necessary.

(B) For a child age three and older, how the child's parents will be regularly informed, at least as often as parents are informed of their nondisabled children's progress, of:

(i) Their child's progress toward major outcomes or annual goals; and

(ii) The extent to which that progress is sufficient to enable the child to achieve the outcomes or goals by the annual IFSP review date.

(k) The steps to be taken to support the transition of the child from early intervention services to early childhood special education or other appropriate services, in accordance with OAR 581-015-0960, 581-015-0964, and 581-015-0968.

(l) The steps to be taken to support the transition of the child from early childhood special education to public schooling or other education setting, in accordance with OAR 581-015-0960, 581-015-0964 and 581-015-0968.

(m) A statement of other services, such as medical services, that the child may need but are not early intervention or early childhood special education services including the funding sources used in paying for those services or the steps to be taken to secure those services through public or private sources. This provision does not apply to routine medical services (e.g., immunizations, and "well-baby" care) unless a child needs those services and the services are not otherwise available or being provided.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0972

IFSP Team Consideration and Special Factors

(1) In developing, reviewing and revising the child's IFSP, the IFSP team shall consider:

(a) The strengths of the child and the concerns of the parents for enhancing the development of their child; and

(b) The results of the initial or most recent evaluation of the child.

(2) For children age three and older, in developing, reviewing and revising the child's IFSP the IFSP team shall consider the following special factors:

(a) The communication needs of the child; and

(b) Whether the child requires assistive technology devices and services.

(3) For children age three and older, in developing, reviewing and revising the IFSP of children described below, the IFSP team shall consider the following additional special factors:

(a) For a child whose behavior impedes his or her development or that of others, consider strategies, positive behavioral interventions and supports to address that behavior;

(b) For a child or family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;

(c) For a child who is blind or visually impaired, instruct the child in pre-literacy or readiness activities related to the use of Braille unless the IFSP determines, after an evaluation of the child, that this instruction is not appropriate for the child;

(d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communications with peers and professional personnel in the child's language and communication mode.

(4) If, in considering these special factors, the IFSP team determines that a child needs a particular device or service (including intervention, accommodation or other program modification) for the child to receive free appropriate public education, the IFSP team shall include a statement to that effect in the child's IFSP.

(5) Nothing in OAR 581-015-0970 or this rule shall be construed to require the IFSP team to include information under one component of a child's IFSP that is already contained under another component of the child's IFSP.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0980

Participants for IFSP Team Meetings and Reviews

(1) Each initial and annual IFSP meeting shall include the following participants:

(a) The child's parents;

(b) The child's EI or ECSE specialist, and as appropriate, persons who will be providing services to the child or family;

(c) A representative of the contractor or subcontractor who may be another member of the team and who is:

(A) Qualified to provide or supervise the provision of EI or ECSE services to meet the unique needs of children with disabilities;

(B) Knowledgeable of typical child development and appropriate activities for infants and young children; and

(C) Knowledgeable about the availability of resources.

(d) For a child eligible for EI services, the service coordinator who is responsible for implementation of the IFSP and may be the child's EI specialist;

(e) For a child who is eligible for ECSE services, the child's preschool teacher if the child is or may be participating in a regular preschool;

(f) Family members and/or advocates as requested by the parents;

(g) Other individuals, including related services personnel as appropriate, invited by the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;

(h) An individual, who may be another member of the team who:

(A) Was involved in conducting the evaluation of the child;

(B) Is knowledgeable about the child's disability; and

(C) Can interpret the developmental or instructional implications of the evaluation; and

(i) A representative of the school district in which the child resides during the year before the child enters school.

(2) The regular preschool teacher shall participate, to the extent appropriate, in the development, review and revision of the child's IFSP, including assisting in the determination of:

(a) Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool environment;

(b) Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and

(c) Appropriate positive behavioral interventions and strategies for the child.

ADMINISTRATIVE RULES

- (3) For the purposes of section (2), "to the extent appropriate" means:
- (a) For those portions of the child's IFSP that the regular preschool teacher may be responsible for implementing, or
 - (b) When the regular preschool teacher's knowledge about the child or about appropriate activities is necessary for IFSP team decision-making.
- (4) Each review shall include the participants in subsections (1)(a), (b), (d) and, if feasible to do so (f) of this rule. When the review indicates any changes in the IFSP, then the individualized meeting shall follow all IFSP procedural requirements.
- (5) For the purposes of subsection (1)(h), if such an individual is unable to attend the meeting, arrangements must be made for the person's involvement through other means, including:
- (a) Participating in a telephone conference call;
 - (b) Having a knowledgeable authorized representative attend the meeting; or
 - (c) Making pertinent records available at the meeting.
- Stat. Auth.: ORS 343.465 – 343.534
Stats. Implemented: ORS 343.521
Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0990

Implementation of the IFSP

- (1) An IFSP shall:
- (a) Be written before EI services or ECSE and related services are provided to the child;
 - (b) Begin as soon as possible following the meeting; and
 - (c) Be provided year round for children receiving EI services, unless agreed to otherwise by the parents; or
 - (d) Be in effect by the child's third birthday and at the beginning of the school year for children receiving ECSE services.
- (2) If a child's third birthday occurs during the summer, the child's IFSP team shall determine when services begin under the IFSP.
- (3) Contractors and subcontractors shall:
- (a) Ensure that the IFSP is available to each regular preschool teacher, EI/ECSE specialist, related service provider and other service provider who is responsible for its implementation; and
 - (b) Inform each teacher and provider described in (2)(a) of his or her specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.
- (4) Contractors or subcontractors shall:
- (a) Provide EI or ECSE and related services to a child with a disability in accordance with an IFSP; and
 - (b) Make a good faith effort to assist the child to achieve the goals and short-term objectives listed in the IFSP. However, no contractor, subcontractor, teacher, specialist, provider or other person shall be held accountable if, despite good faith implementation, a child does not achieve the growth projected in the annual goals and short-term objectives.
- (5) Nothing in this rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.
- Stat. Auth.: ORS 343.465 – 343.534
Stats. Implemented: ORS 343.521
Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

Adm. Order No.: ODE 2-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 5-1-03

Rules Adopted: 581-021-0023

Subject: Mercury Elimination Policies - Senate Bill 594 was enacted during the 2001 Legislative Session. This bill requires the State Board to adopt administrative rules to eliminate the use and purchase of elemental mercury, mercury compounds and mercury added instructional materials by public elementary and secondary schools. This administrative rule will implement that statutory requirement.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of a rule, please contact Debby Ryan at (503) 378-3600, ext. 2358 or e-mail debby.ryan@state.or.us

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-021-0023

Mercury Elimination Policy

- (1) Definitions:

- (a) "Mercury-added instructional material" means an item or product containing intentionally added elemental mercury or mercury compound(s) used for educational purposes.
- (b) "Mercury compound" means a substance consisting mercury chemically combined with another element or combinations of elements, e.g. mercury oxide (HgO).
- (c) "Elemental mercury" means the silvery-white liquid metal with atomic number of 80 and an atomic mass of 200.57 represented by chemical symbol Hg.
- (2) All Oregon school districts must:
- (a) Prohibit the purchase of elemental mercury, mercury compounds and mercury-added instructional materials;
 - (b) Eliminate all elemental mercury and mercury compounds that are maintained for education purposes, for example, vials of liquid mercury and samples of mercury compounds contained in chemistry class;
 - (c) Eliminate the use of mercury-added instructional materials; and
 - (d) Eliminate the use of items and products containing elemental mercury or mercury compounds, as those items and products are replaced at the end of their normal useful lives with cost-effective mercury-free alternatives.
- (3) As instructional materials, items and products containing elemental mercury and mercury compounds are replaced; school districts should work with the Oregon Department of Environmental Quality in the proper disposal of materials, items and products.

Stat. Auth.: ORS 326.051(b)
Stats. Implemented: ORS 326.051(g)
Hist.: ODE 2-2004, f. & cert. ef. 1-15-04

Adm. Order No.: ODE 3-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 10-1-03

Rules Amended: 581-022-1730

Subject: Changes in statutes and recordkeeping have changed the methods the court enters certain and seals certain records. This change helps define what a conviction is and how out of state records will be considered in Oregon.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext. 2664 or e-mail Deborah.Lincoln@state.or.us. For a copy of a rule, please contact Debby Ryan at (503) 378-3600, ext. 2358 or e-mail debby.ryan@state.or.us

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1730

Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

- (1) Definitions of terms shall be as follows:
- (a) "Subject individual" means:
 - (A) Any person newly hired after December 31, 1993 by a school district or an education service district into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;
 - (B) Any person newly hired after December 31, 1993 as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;
 - (C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;
 - (D) An individual currently employed by a school district either part time or full time, which, has direct, unsupervised contact with children.
 - (b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;
 - (c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

- (A) Oregon State Police (OSP) — \$12;
- (B) Federal Bureau of Investigation (FBI) — \$24;
- (C) Oregon Department of Education — \$6;

ADMINISTRATIVE RULES

(D) TOTAL — \$42.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) Two properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(H) This rule is expressly made retroactive to June 1, 2002.

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Newly hired" means the employment of a person after application or request for a position having direct, unsupervised contact with students without regard to that person's current or previous employer; and

(h) "School district" means a taxing district providing public elementary or secondary education, or any combination thereof, within the state; an education service district; the Oregon School for the Blind; the Oregon School for the Deaf; and an educational program under the Juvenile Corrections Education Program.

(2) School districts and education service districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify the criteria for determining which staff positions will warrant consideration for subject individuals as defined in this rule. The local districts shall publish a list of those positions affected;

(b) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(c) Provide a clear statement of district response to notification by the Superintendent of Public Instruction or the State Board of Education regarding persons who have either been convicted, or have made a false statement as to the conviction of any of the crimes prohibiting employment that are listed in section (9) of this rule;

(d) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(e) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(f) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts and education service districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule:

(a) Immediately following offer and acceptance of employment or contract;

(b) Subject individuals described in section (1)(a)(D) of this rule whose birth month is January, February, or March shall submit by January 1, 1997;

(c) Subject individuals described in section (1)(a)(D) of this rule whose birth month is April, May, or June shall submit by January 1, 1998;

(d) Subject individuals described in section (1)(a)(D) of this rule whose birth month is July, August, or September shall submit by January 1, 1999; and

(e) Subject individuals described in section (1)(a)(D) of this rule whose birth month is October, November, or December shall submit by January 1, 2000.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, or have made a false statement as to the conviction of a crime, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 (1995 Replacement Part) are:

(a) ORS 163.095 — Aggravated Murder;

(b) ORS 163.115 — Murder;

(c) ORS 163.185 — Assault in the First Degree

(d) ORS 163.235 — Kidnapping in the First Degree;

(e) ORS 163.355 — Rape in the Third Degree;

(f) ORS 163.365 — Rape in the Second Degree;

(g) ORS 163.375 — Rape in the First Degree;

(h) ORS 163.385 — Sodomy in the Third Degree;

(i) ORS 163.395 — Sodomy in the Second Degree;

(j) ORS 163.405 — Sodomy in the First Degree;

(k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;

(m) ORS 163.415 — Sexual Abuse in the Third Degree;

(n) ORS 163.425 — Sexual Abuse in the Second Degree;

(o) ORS 163.427 — Sexual Abuse in the First Degree;

(p) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

(q) ORS 163.445 — Sexual Misconduct;

(r) ORS 163.465 — Public Indecency;

(s) ORS 163.515 — Bigamy;

(t) ORS 163.525 — Incest;

(u) ORS 163.547 — Child Neglect in the First Degree;

(v) ORS 163.575 — Endangering the Welfare of a Minor;

(w) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

(x) ORS 163.675 — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

(y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;

(z) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;

ADMINISTRATIVE RULES

(aa) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;

(bb) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;

(cc) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree

(dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree

(ee) ORS 164.325 — Arson in the First Degree;

(ff) ORS 164.415 — Robbery in the First Degree;

(gg) ORS 166.005 — Treason

(hh) ORS 166.087 — Abuse of Corpse in the First Degree;

(ii) ORS 167.007 — Prostitution;

(jj) ORS 167.012 — Promoting Prostitution;

(kk) ORS 167.017 — Compelling Prostitution;

(ll) ORS 167.062 — Sadoomasochistic Abuse or Sexual Conduct in Live Show;

(mm) ORS 167.065 — Furnishing Obscene Materials to Minors;

(nn) ORS 167.070 — Sending Obscene Materials to Minors;

(oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(pp) ORS 167.080 — Displaying Obscene Materials to Minors;

(qq) ORS 167.087 — Disseminating Obscene Materials;

(rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(ss) ORS 475.995 — Distribution of Controlled Substance to Minors;

(tt) ORS 475.999 — Manufacture or Delivery of controlled Substance to Minor or Student Within 1,000 Feet of School.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 of an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(12) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(13) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(14) Contested case appeals may be informally resolved through procedures specified in ORS 183.415(5) or in any manner lawfully permitted.

(15) The Oregon Department of Education shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced within 90 days of the return of the card used by the FBI unless required for evidence in a contested case. Cards used in contested cases will be destroyed at the direction of adjudication or within 90 days following case resolution, whichever is appropriate.

(16) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(17) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) District submitting the cards;
- (c) Date cards and Department form received;
- (d) Date completed cards (2) sent to Oregon State Police;
- (e) Date denial or probationary approval sent to district;
- (f) Date FBI card returned to Department; and
- (g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 12-1998(Temp), f. & cert. ef. 6-23-98 thru 12-19-98; ODE 4-1999, f. & cert. ef. 1-12-99; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; ODE 3-2004, f. & cert. ef. 1-15-04

Oregon Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 11-2003(Temp)

Filed with Sec. of State: 12-23-2003

Certified to be Effective: 12-23-03 thru 6-15-04

Notice Publication Date:

Rules Adopted: 123-006-0041, 123-006-0051

Rules Amended: 123-006-0005, 123-006-0015

Subject: This rule sets forth the Department's personal services screening and selection procedures. Specifically, this rule provides for alternative procedures for task order contracts.

Rules Coordinator: Steven Santos—(503) 986-0102

123-006-0005

Introduction

Pursuant to ORS 285A.075(7) the department may enter into personal services contracts as required or appropriate to carry out its authorized mission. This rule sets forth the Department's personal services screening and selection procedures and meets the requirements of ORS 279.049(5)(a) and 279.051(1).

Stat. Auth.: ORS 285A.075, 279 .051

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04

123-006-0015

Definitions

(1) "Director" means the Director of the Economic and Community Development Department.

(2) "Department" means the Economic and Community Development Department.

Stat. Auth.: ORS 285A.075, 279 .051

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04

123-006-0041

Standard Procedures and Exemptions

(1) The Department will comply with OAR chapter 125, division 020, the Department of Administrative Services rules for Personal Services Contracts, as if it were an Agency subject to those rules, for all its personal services contracts, with the following exceptions:

(a) For Architect, Engineering and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR chapter 125, division 025, the Department of Administrative Services rules for Architect, Engineering and Related Professional Services, as if it were a Contracting Agency subject to those rules.

(b) For personal services contracts exempt from ORS Chapter 279, the Department may enter into direct contract negotiations with a vendor.

(c) For personal services contracts relating to the Department's foreign trade offices operating outside the state, the Department will comply with OAR chapter 123, division 125.

(d) For personal services contracts, other than those identified in (a) to (c) of this rule, that are best implemented as multiple task order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0051.

Stat. Auth.: ORS 285A.075, 279 .051

Stats. Implemented: ORS 279 .051

Hist.: EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04

123-006-0051

Alternative Procedures for Task Order Contracts

(1) The Department will comply with the procedures set forth in this administrative rule for personal services contracts, other than those identified in OAR 123-006-0041(1)(a) to (c), that are best implemented as multiple task order contracts under an agreement to agree. For purposes of these rules, personal services contracts are best implemented as multiple task order contracts under an agreement to agree if that implementation will provide substantial savings in time or cost, or both, over a single contract implementation.

(2) The screening and selection procedures for task order contracts are as follows:

(a) If Department reasonably anticipates that any task order contract under a single Agreement-to-Agree will provide for payments to the vendor in excess of \$75,000, the Department will select the vendor through the formal selection process described in OAR 125-020-0310 and 125-020-0320.

ADMINISTRATIVE RULES

(b) For all other task order contracts, the Department will select the vendor through the informal selection process described in OAR 125-020-0330, with the exception of 125-020-0330(5) and (6).

(c) The Department and the selected vendor will sign a non-binding agreement to agree, in which the vendor acknowledges its readiness to enter into separate task order contracts with the Department that will describe, among other things, the specific services to be performed, the timeline for delivery of the services, and the compensation for the services. Each task order subsequently executed with the vendor pursuant to the non-binding Agreement-to-Agree must be within the scope of the solicitation and will constitute a separate legally-binding contract between the Department and the vendor.

Stat. Auth.: ORS 285A.075, 279 .051

Stats. Implemented: ORS 279 .051

Hist.: EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 9-2003

Filed with Sec. of State: 12-19-2003

Certified to be Effective: 12-19-03

Notice Publication Date: 8-1-03

Rules Amended: 813-300-0010, 813-300-0120

Subject: 813-300-0010 amends definitions for terms found within the program. 813-300-0120 sets forth how the individual development account be used within the scope of the program to better accommodate access to the program by federally recognized tribes in Oregon.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-300-0010

Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Account holder" means a member of a lower income household that has a net worth of less than \$20,000 who is the named depositor of an individual development account.

(2) "Contributor" means a person or entity contributing funds to the Department or to a fiduciary organization for the purpose of matching IDA deposits by an account holder or for funding program plan operations.

(3) "Department" means the Housing and Community Services Department established in ORS 456.555 and, where applicable, its designee.

(4) "Designated beneficiary" means a minor-age member of the account holder's household who is the beneficiary of an IDA used to pay the member's extracurricular non-tuition expenses designed to prepare the member for post-secondary education or job training.

(5) "Fiduciary organization" means a non-profit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on January 1, 1999, or a federally recognized Indian tribe or band, as selected by the department under these rules.

(6) "Fiduciary organization program plan" or "program plan" means a mission statement by a fiduciary organization and the corresponding detailed plan by it for the solicitation of contributions (tax credit or otherwise) and prospective account holders, the management of IDA's and their associated personal development plans, and the operation of the fiduciary organization itself — all as approved by the Department and with such modifications as the Department may require. A prospective program plan must accompany any application to the Department for its approval of a fiduciary organization.

(7) "Financial institution" means an organization regulated under ORS Chapters 706 to 716, 722 or 723, or in the case of an account established for the purpose described in ORS 458.685(1)(c) related to college savings plans, a financial institution as defined in ORS 348.841.

(8) "Individual development account (IDA)" or "account" means a contract between an account holder and a fiduciary organization, for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into a financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(9) "Lower income household" means a household having an income equal to or less than 80 percent of the median household income for the area as determined by the Department, giving consideration to area household data published by the United States Department of Housing and Urban Development.

(10) "Net worth" means the value of all assets owned in whole or part by household members other than equity in a residence, minus the total debts and obligations of household members, all as measured at the time the prospective account holder applies to establish the IDA.

(11) "Oregon individual development account tax credit" or "tax credit" means a credit against taxes otherwise due under ORS Chapter 316, 317, or 318, as allowed in return for contributions to a fiduciary organization for eventual distribution to individual development accounts established under ORS 458.685.

(12) "Personal development plan" means a written plan developed jointly by the fiduciary organization and the prospective account holder for an IDA that is designed to provide the account holder with appropriate financial and asset training, counseling, career or business planning and other services that will increase the independence of the account holder and his/her household through achievement of the IDA's approved purposes. The personal development plan must be in conformance with ORS 458.680, these rules and other requirements of the Department.

(13) "Related funds" means contributions to fiduciary organizations for IDA program purposes that do not qualify for tax credits and supplemental funding from the Department for IDA program purposes.

(14) "Reverted funds" means matching IDA deposits that devolve to a fiduciary organization because of the termination or revocation of a person as an account holder or unused tax credit contributions or supplemental funds upon termination or revocation of a fiduciary organization or at the expiration of its program plan.

(15) "Supplemental funding" means funds provided by the Department to fiduciary organizations for program plan purposes.

(16) "Tax credit contributor" means a contributor who receives a corresponding tax credit as allowed in ORS 315.271.

(17) "Tax credit contributions" means funds obtained from tax credit contributors who, in return, earn a tax credit

(18) "Trust Land" means all lands held in trust by the United States on behalf of an Indian Tribe or individual Indian.

Stat. Auth.: ORS 456.555, ORS 456.625, ORS 458.700.

Stats. Implemented: ORS 315.271, ORS 458.670-ORS 458.700.

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03

813-300-0120

Account Holder Use of Funds

(1) Account holders only may withdraw and use IDA deposits in a manner consistent with their IDA, the relevant personal development plan, these rules and any relevant directives of the Department.

(2) Account holders only may withdraw and use IDA deposits for the following purposes as approved by their fiduciary organization:

(a) For the acquisition of post-secondary education or job training;

(b) If the account holder has established the account for the benefit of a designated beneficiary, for the payment of extracurricular nontuition expenses designed to prepare the designated beneficiary for post-secondary education or job training;

(c) To capitalize a small business;

(d) For the purchase of a primary residence;

(e) With respect to account holder deposits only, for an emergency as set forth in ORS 458.685(2)(a); and

(f) If the account holder has established a qualified tuition savings program account under ORS 348.841 to 348.873 on behalf of a designated beneficiary, the establishment of an additional qualified tuition savings program account on behalf of the same designated beneficiary.

(3) IDA deposits, including the interest earned thereon, withdrawn by the account holder for an emergency as set forth in ORS 458.685 and OAR 813-300-0120(2)(e) above, must be repaid by the account holder within 12 months.

(4) In addition to payment on the purchase price of a residence pursuant to OAR 813-300-0120(2)(d) above, appropriate account moneys may be used to pay any usual or reasonable settlement, financing or other closing costs with respect to such residence.

(5) Account holders may not use IDA deposits to purchase a primary residence if they have owned or held any interest in a residence during the three years prior to making the purchase for which they intend to use IDA deposits. This three year restriction shall not apply in the following:

(a) For displaced homemakers or other individuals who have lost homeownership as a result of divorce.

(b) For a tribal member who has an interest in trust land and still has rights to an allotment under the Dawes Act Public Law 280 and amended in 1891, the 1906 Burke Act and the 1910 Omnibus Act Statutes at Large 24, 388-91, NADP Document A1887, but the tribal member faces multiple ownership of his or her land status and cannot successfully achieve sole ownership in order to receive any equity or collateral from that allotment. If the tribal member solely owns a residence on land known as an allotment

ADMINISTRATIVE RULES

and has successfully received sole ownership including the receipt of title status report (TSR) through the Bureau of Indian Affairs, they may not use IDA deposits to purchase a primary residence. If the person can receive more than \$2500 in equity or collateral of their allotment, the value over \$2500 shall be included in their asset limit.

(6) In capitalizing a small business pursuant to OAR 813-300-0120(2)(c) above, IDA deposits may be used for capital, plant, equipment and inventory expenses or for working capital pursuant to a business plan approved by the fiduciary organization. To qualify for fiduciary organization approval, the business plan must have been developed by a financial institution, a nonprofit microenterprise program or other qualified agent demonstrating business expertise. The business plan also must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(7) Account holders must repay moneys improperly taken from IDA deposits including the interest earned thereon, when required by their fiduciary organization or by the Department.

Stat. Auth.: ORS 456.555, ORS 456.625, ORS 458.700.
Stats. Implemented: ORS 458.670-458.700
Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 22-2003
Filed with Sec. of State: 12-16-2003
Certified to be Effective: 1-1-04
Notice Publication Date: 9-1-03
Rules Amended: 845-005-0304

Subject: This rule describes processes through which local governments give recommendations to OLCC on initial and renewing license applications.

The 2003 legislature passed Senate Bill 724, which extends the time period in which a local government can make a recommendation to OLCC about a new license. The old time frame in statute was 30 days; SB 724 changes the timeline to 45 days. We need to amend the rule so that it is not in conflict with statute.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-005-0304

Local Government Recommendations: Requirements for Local Governments and License Applicants

(1) ORS 471.166 provides that the Commission may take into consideration a local government's timely written recommendation on initial and renewing licenses, and allows the Commission to extend by rule the time allowed a local government to render its written recommendation.

(2) If the local government has not provided a written recommendation to the Commission within the time frames allowed by Sections (5) and (6) of this rule, the Commission shall proceed as if the local government has made a favorable recommendation.

(3) The Commission requires each applicant for an initial license to provide to the local government written notice of the filing of the application. The form of the written notification shall consist of a legible copy of the Commission's Liquor License Application form for license applications, and legible copies of each Individual History form and Business Information form submitted with the license application.

(4) The applicant shall submit to the Commission a dated copy of a receipt or other appropriate dated documentation of compliance with subsection (3) of this rule, within ten days of applicant's provision of notification to the local government.

(5) Following notification by the applicant as stated in section (4) of this rule, the Commission shall allow a local government 45 days in which to provide a written recommendation to the Commission on the initial license application. However, if within 45 days of the date the applicant for an initial license gives notice to the local government, the local government files with the Commission a written request that meets the requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within which to render its written recommendation on the license application.

(6) The Commission provides written notice to each local government of the annual licenses in the locality that are both due to expire within three months and are subject to local government renewal recommendations. If, within 60 days of the date the Commission has given notice to the local government, the local government files a written request with the Commission that meets the requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within

which to render its written recommendation on the application to renew a license.

(7) The local government's written request must set forth the reason additional time is needed, state that the local government is considering making an unfavorable recommendation, and state the specific grounds being considered toward an unfavorable recommendation. Valid grounds for an unfavorable recommendation are stated in OAR 845-005-0308(3).

(8) For the purposes of this rule an unfavorable recommendation is a recommendation to deny a license or to issue a restricted license.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implements: ORS 471.166
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 22-2003, f. 12-16-03, cert. ef. 1-1-04

Adm. Order No.: OLCC 23-2003(Temp)
Filed with Sec. of State: 12-16-2003
Certified to be Effective: 1-1-04 thru 6-28-04
Notice Publication Date:
Rules Amended: 845-005-0445

Subject: This is the rule wherein the temporary authority to operate is described. Senate Bill 724 allows the agency Administrator to extend a temporary authority to operate (normally issued for 90 days) by an extra 30 days if the Commission has not granted or denied the application at the end of the 90 day period. Current rule language does not specify time frames for temporary authorities. We propose to amend the rule to add language specifying conditions under which a temporary authority may be extended.

Due to the January 1, 2004 effective date, we need to temporarily amend the rule to comply with statutory language. We will proceed with permanent rulemaking while the temporary rule is in effect.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-005-0445

Temporary Authority

(1) ORS 471.302 and 471.297 allow the Commission to give certain applicants the authority to sell and serve alcoholic beverages while the Commission determines the applicant's eligibility. Temporary authorities to operate are not to exceed 90 days, unless an extension of up to an additional 30 days is granted under section (2) of this rule. The Commission may refuse to grant this temporary authority to operate when the Commission has reasonable basis to believe that the applicant may not be eligible for a license under ORS Chapter 471 and the Commission's Administrative Rules, OAR chapter 845.

(2) ORS 471.297 and 471.302 allow the agency Administrator to extend a temporary authority to operate for a period not to exceed 30 days if the Commission has not granted or denied the application at the end of the 90-day period. An extension of not more than 30 days may be granted by the agency Administrator under the following circumstances:

(a) The agency has not received a written recommendation from the local governing body as required by ORS 471.166 and OAR 845-005-0304; or

(b) An extension of time is necessary for the agency to complete its investigation or processing of the application.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.302 & 471.297
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2003(Temp), f. 12-16-03, cert. ef. 1-1-04 thru 6-28-04

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 25-2003
Filed with Sec. of State: 12-30-2003
Certified to be Effective: 1-1-04
Notice Publication Date: 11-1-03
Rules Adopted: 459-070-0100, 459-070-0110, 459-075-0030
Rules Amended: 459-009-0100
Rules Repealed: 459-009-0110

Subject: New administrative rules are needed to implement and clarify Enrolled House Bill 2020, which establishes the Oregon Public Service Retirement Plan. OAR 459-070-0100 directs participating employers to submit required data to PERS no later than three business days following the pay date of a pre-determined pay period and

ADMINISTRATIVE RULES

specifies penalties for incomplete or late reporting. OAR 459-070-0110 directs participating employers to remit employee and employer contributions to PERS for each pay period and specifies penalties for incomplete or late remittances. OAR 459-075-0030 limits the amount of overtime salary that can be considered for purposes of final average salary. OAR 459-009-0100 is being amended to direct employers to transmit reports and contributions to PERS in accordance with OAR 459-070-0100 and 459-070-0110. OAR 459-009-0110 is being repealed because penalties are addressed OAR 459-070-0100 and 459-070-0110.

Rules Coordinator: Yvette S. Elledge—(503) 603-7713

459-009-0100

Employer Reporting and Remittance of Contributions

Employers shall transmit reports and contributions to PERS in accordance with OAR 459-070-0100 and 459-070-0110.

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

Stats. Implemented: ORS 238 & OL 2003 Ch. 733

Hist.: PER 8, f. 12-15-55; PER 1-1981, f. & ef. 1-15-81; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0130; PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04

459-070-0100

Employer Reporting

(1) Definition. "Pay period" means the span of time covered by an employer's report to PERS.

(2) Unless otherwise agreed upon between the PERS Executive Director and the employer, the employer shall transmit to PERS an itemized report of all information required by PERS. Reports shall include wage, service, and demographic data related to that pay period.

(3) The report required under section (2) of this rule shall be acceptable to PERS and transmitted on forms furnished by the agency or in an equivalent format. The report shall be transmitted electronically, faxed, or postmarked, as applicable, no later than three business days following the end of each pay period listed in section (4) below.

(4) PERS shall assign the employer to one of the following pay periods which most closely matches the employer's pay cycle:

(a) Monthly: the pay period ends on the last day of the month;

(b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day of the month;

(c) Weekly: the pay period ends the Friday of every week, commencing January 2, 2004; or

(d) Biweekly: the pay period ends every other Friday, commencing January 9, 2004.

(5) If the report required under section (2) of this rule is accepted by PERS, PERS shall notify the employer of any exceptions and the employer will have 10 business days to reconcile its report. The corrected report must be transmitted electronically, faxed, or postmarked, as applicable, to PERS no later than 10 business days from the date of notification to avoid the penalty described under section (6) of this rule.

(6) Failure of an employer to transmit the report required under section (2) of this rule shall make the employer liable for a penalty equal to one percent of the total amount of the prior year's annual contributions or \$2000, whichever is less, for each month the employer is delinquent.

(7) The PERS Executive Director will have the discretion to waive the penalty described in section (6) of this rule for all reports due from January 1, 2004 through June 30, 2004. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(8) If an employer incurs a penalty under section (6) of this rule, PERS shall issue a penalty statement to the employer. The penalty must be paid within 30 calendar days of the statement date. If not paid within that time, interest will be charged on the penalty amount at the rate allowed by state law for payments due under ORS 82.010.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04

459-070-0110

Employer Remittance of Contributions

(1) Definition. "Statement date" means the date a statement of contributions or penalty due is generated by PERS.

(2) Once PERS receives the report described in OAR 459-070-0100(2) and (5), it shall issue a statement of contributions and any penalty due, if applicable.

(3) Unless otherwise agreed upon by the PERS Executive Director and the employer, an employer shall transmit the amount of employee contributions, employer paid employee contributions, and employer contributions for the Individual Account Program along with the corresponding

contributions to fund the pension programs, for each pay period to the Board so that it shall be postmarked or electronically transferred no later than seven business days from the statement date.

(4) Failure of any employer to transmit contributions within the time limit specified in section (3) will make the employer liable for a penalty equal to one percent of the total amount of contributions due for that pay period for each month the employer is delinquent.

(5) If an employer transmits an amount less than the contributions required by section (3) of this rule, PERS shall allocate the contributions received in the following order:

(a) To the Individual Account Program;

(b) To the Pension Program;

(c) To the PERS Fund.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (4) of this rule for all contributions due from January 1, 2004 through June 30, 2004. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(7) If an employer incurs a penalty under section (4) of this rule, PERS shall issue a penalty statement to the employer. The penalty must be paid within 30 calendar days of the statement date. If not paid within that time, interest will be charged on the penalty amount at the rate allowed by state law for payments due under ORS 82.010.

(8) If PERS is required to invoice an employer for employee contributions and corresponding employer contributions on wages paid in previous reporting periods, an amount equal to the earnings that would have been credited to affected members and employers for those years, if any, may be added to the applicable account and charged to the employer.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04

459-075-0030

Calculation of Overtime for Purposes of Final Average Salary

(1) For purposes of calculating final average salary, a member's salary shall not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same employee class.

(2) The average number of hours of overtime for an employee class shall be determined by the employer based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year. The employer shall maintain records of the average number of hours of overtime for each employee class for each calendar year and provide those records to PERS upon request.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 16-2003

Filed with Sec. of State: 12-19-2003

Certified to be Effective: 12-19-03

Notice Publication Date: 10-1-03

Rules Adopted: 177-091-0000, 177-091-0010, 177-091-0020, 177-091-0030, 177-091-0040, 177-091-0050, 177-091-0060, 177-091-0070, 177-091-0080, 177-091-0090, 177-091-0100, 177-091-0110

Rules Repealed: 177-082-0100

Subject: These rules establish the procedures and requirements for Scoreboard, the Lottery's new sports-related lottery game. OAR 177-082-0100 (Ticket Validation and Redemption of Winning Cash Quest Game Ticket) is repealed because that game ended in 2000 and the expiration date for this rule has been satisfied.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-091-0000

Purpose and Disclaimer

(1) Purpose: These rules establish the procedures and requirements for playing Oregon Lottery Scoreboard, a lottery game operated by the Oregon State Lottery and authorized by the Oregon State Lottery Commission, which is based upon the results of sporting events.

(2) Disclaimer: Scoreboard is not associated with, sponsored, or authorized by the National Football League, its member clubs, or any other professional or amateur sports league or organization.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

ADMINISTRATIVE RULES

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0010

Definitions

For the purposes of division 91, the following definitions apply except as otherwise specifically provided in OAR chapter 177, or unless the context requires otherwise:

(1) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the sporting-event and game-play selections made by a player and that contains, but is not limited to, the following data: The caption "Scoreboard", the dates of the sporting events for which the ticket is played, an identifying number, the price of the ticket, a six-digit retailer number, a serial number, and a bar code.

(2) "Official Scoreboard results" means the Lottery's list of the final sporting event scores.

(3) "Quick pick" means the random selection by a terminal of the numbers played on a ticket.

(4) "Terminal" means an on-line terminal as defined in OAR 177-070-0005(4).

(5) "Ticket validation" or "validation" means the process of determining whether a ticket presented for payment is a winning ticket as set forth in OAR 177-070-0035.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0020

Game Description

(1) General: Scoreboard is an on-line lottery game based on the outcome of sporting events in which a player must match quick pick numbers to the last digit of the final score for each team in each period of play, including, but not limited to, quarters, innings, rounds, and periods, in a sporting event selected by the Lottery. These scores may be commonly known as the "box score", but only the Lottery's official Scoreboard results are used to determine winners. The final score includes any overtime play.

(2) Name of Game: Lottery may from time to time use variations of the name Scoreboard including, but not limited to, such names as "Monday Scoreboard", "Monday Night Scoreboard."

(3) Game Changes: The Director reserves the right to suspend or cancel the Scoreboard game at any time. The Director's decisions are final.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0030

Play Dates and Times

Scoreboard shall support up to twenty sporting events. Dates and times to purchase a ticket will vary depending on the times of the sporting events selected by the Lottery during the Lottery's Scoreboard season.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0040

Price

The minimum price of a Scoreboard ticket is \$2. The maximum price of a ticket is \$20. A player may choose to wager \$2, \$3, \$4, \$5, \$10, or \$20 per ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0050

Ticket Purchase, Restrictions, and Characteristics

(1) General: Scoreboard tickets must be purchased during the Oregon Lottery's Scoreboard season which will be determined by the Lottery and announced by reasonable means before or during the season.

(2) Authorized Retailer: Scoreboard tickets are sold at retailer locations that have a Lottery contract to sell on-line lottery tickets.

(3) Age of Player: A player must be at least 18 years of age to purchase a Scoreboard ticket.

(4) Ticket Purchase: A ticket may be purchased either from a clerk-operated terminal, or a player-operated terminal. All Scoreboard tickets are quick picks.

(a) Purchasing a Ticket From a Clerk-Operated Terminal: The player informs the clerk of the event, the number of tickets desired, and the amount of money to be played on each ticket. After the player submits the request and the money to the clerk, the clerk uses the terminal to issue the requested tickets to the player.

(b) Purchasing a Ticket From a Player-Operated Terminal: A player may purchase Scoreboard tickets from a player-operated terminal by following the instructions appearing on the touch screen of the terminal. Once the player has completed the player's selection and inserted the price of the tickets into the terminal, the terminal issues the tickets to the player.

(5) Ticket Description: On each ticket purchased by the player, four sets of two single-digit numbers for each of the specified event's periods of play will be printed. The single-digit numbers produced will range from zero through nine. No two sets of numbers in any period of play will be duplicated.

(6) Ticket Characteristics: A ticket is the only acceptable evidence of the selections made by a player and the only valid receipt for claiming a prize. A copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or the selections made by a player.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0060

Cancellation of Tickets

A player may not cancel a Scoreboard ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0070

Prize Structure

The following table sets forth the prize structure and the estimated probability of winning a Scoreboard prize for a sporting event with four quarters of play. Quarters are defined as first quarter, second quarter, third quarter, and final score. Payouts on this table are based on a \$2 wager. Payouts increase proportionally based on the amount wagered by the player. [Table not included. See ED. NOTE.]

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0080

Payment of Prizes; Ticket Validation Requirements

(1) Payment of Prizes: A prize payment for a winning Scoreboard ticket must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025.

(2) Validation of Tickets: To be a valid ticket and eligible to receive a prize, a ticket must:

(a) Be validated in accordance with the provisions of OAR 177-070-0035; and

(b) Be a winner under OAR 177-091-0100.

(3) Limitation on Prizes Paid: A player shall receive only the highest prize available for each winning ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0090

Probability of Winning

The number of prizes for Scoreboard is not pre-determined by the Lottery. The overall prize percentage payout for Scoreboard prizes is estimated at 70 percent over time but will vary from week to week, as well as from year to year, due to factors which include, but are not limited to, the number of players participating each week and the number of winning wagers.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0100

Determination of Winners

(1) General: A player wins by correctly matching the numbers on the player's ticket to the last digit of the score of the specified sporting event for the specified period of play.

ADMINISTRATIVE RULES

(2) Official Game Results: The scores in a sporting event become official for the purpose of playing Scoreboard when adopted by the Lottery and listed in the Lottery's official game results. The Lottery shall not recognize protests or overturned decisions.

(3) Availability of Results: The Lottery shall make Scoreboard results available at all retailer locations that sell Scoreboard tickets after each sporting event has ended.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461
Stats. Implemented: ORS 461.213
Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

177-091-0110

Sporting Event Cancellation, Rescheduling, or Suspension

(1) Cancellation of Sporting Event: If a sporting event is canceled prior to the start, or during the course of play, and it is not declared final and it is not rescheduled by the governing body for that event, the Director shall authorize the refund of the purchase price of a player's ticket for that sporting event to the player.

(2) Sporting Event Rescheduled: If a sporting event is rescheduled prior to the start, or during the course of play, by the governing body for that event, play on the Scoreboard tickets purchased for that sporting event may continue for the sporting event at the rescheduled time, or in the exercise of the Director's discretion, the Director may authorize the refund of the purchase price of a player's ticket for that sporting event to the player.

(3) Suspension of Sporting Event After Play Has Started: If a sporting event is suspended after play has started and the governing body for that event does not reschedule the event and declares the results of that event as official/final, the Lottery shall adopt the score from the last completed period of play as the score for any remaining unplayed periods of play as well as the final score of that sporting event. For example, if a professional football game ends after two quarters of play, and the National Football League declares the game official, the score at the end of the second quarter of play also becomes the score for the unplayed third quarter and the final game score.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461
Stats. Implemented: ORS 461.213
Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03

Adm. Order No.: LOTT 1-2004(Temp)

Filed with Sec. of State: 1-5-2004

Certified to be Effective: 1-5-04 thru 6-25-04

Notice Publication Date:

Rules Adopted: 177-045-0050, 177-045-0060, 177-045-0070, 177-045-0080

Rules Amended: 177-045-0000, 177-045-0010, 177-045-0030, 177-045-0040

Rules Suspended: 177-045-0020

Subject: The proposed amendments update definitions, add new provisions regarding video lottery terminals and allocation to retailers, revise terminal placement requirements, add new provisions regarding equipment loss and liability, add new provisions regarding insurance coverage on Lottery equipment by retailers, and make general housekeeping and grammar changes. OAR 177-045-0020 is being suspended as it has been moved to Division 200 - General Video Lottery Game Rules. For clarification, the division title will be changed to Retail Sales Equipment Management.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-045-0000

Definitions

For purposes of OAR chapter 177, division 45, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Equipment" means all equipment placed by the Lottery or a Lottery vendor on a retailer's premises including, but not limited to, video lottery terminals and all equipment necessary for their operation, instant ticket vending machines, validation terminals, on-line sales terminals, display equipment, and interior and exterior signage.

(2) "Instant ticket vending machine" or "ITVM" means an electrical, electronic, or electro-mechanical device that dispenses Scratch-it or Breakopen tickets directly to a consumer upon payment of the appropriate purchase price.

(3) "Occurrence" means an accident, incident, or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant losses. Each loss by earthquake, flood, freeze, or windstorm will constitute a single occurrence. If more than one earthquake or flood occurs within any 72-hour period, the State of Oregon will determine the moment when the time period began.

(4) "Premises" has that definition as used in OAR 177-040-0000(6).
Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200
Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0010

Equipment Management Generally

(1) General Equipment Management: The Director of the Lottery shall manage Lottery equipment pursuant to ORS 461.200. The Lottery may discontinue or remove existing equipment, or may implement new or replacement equipment at any time.

(2) Retailer's Sales: A retailer's sales, or in the case of an applicant, estimated sales, of Lottery tickets and shares are the prime factor considered by the Director in managing Lottery equipment.

(3) Equipment Inspection: The Lottery may access, inspect, furnish, repair, place, replace, upgrade, modify, add, or remove Lottery equipment at a retailer's premises at any time during regular business hours.

(4) Obsolete and Defective Equipment: The Lottery may replace obsolete or defective equipment with new, used, or refurbished replacement equipment.

(5) Test Equipment: With the consent of the retailer, the Lottery may deploy test equipment on a retailer's premises.

(6) Other Laws: This rule does not preclude the Lottery from removing any or all of its equipment pursuant to any other applicable law, rule, or contract provision.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200
Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0020

Video Lottery Game Management and Sales Requirements

(1) Video Game Management: The Director of the Lottery shall manage the video lottery games installed on its video lottery terminals pursuant to ORS 461.200. The Director may revise the Lottery's video lottery games at any time and in any manner authorized by the Commission. The Lottery is under no obligation to continue to operate existing games and may initiate new or revised games at any time.

(2) Retailer's Sales: A retailer's sales of all lottery tickets and shares and sales of non-lottery products are the prime factors considered by the Lottery in managing the games installed on its video lottery equipment. A retailer's sales of video lottery games must comply with the provisions of OAR 177-040-0017 and/or 177-040-0061.

(3) Removal of Games: The Lottery may furnish or remove video games from equipment on a retailer's premises at any time for any reason. The Lottery may limit the amount of time that a game is available at any time for any reason.

(4) Test Equipment: With the consent of the retailer, the Lottery may test new or revised games on its equipment on a retailer's premises.

(5) Operation of Other Laws: This rule does not preclude the Lottery from removing any or all of its games installed on its equipment or limiting the time or hours the games are operational pursuant to any other applicable law or contract provision.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200
Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; Suspended by LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0030

Number of Video Lottery Terminals and Sales Requirements

(1) Allocation of Terminals: In the exercise of the Director's discretion and subject to all other requirements, the Director may allocate and reallocate the Lottery's video lottery terminals among Lottery video retailers at any time and in any manner. The Director shall consider:

(a) Availability: The availability of the terminals and related equipment.

(b) Public Access: Adequate and convenient public access to video lottery games statewide.

(c) Retailer Sales: The actual or projected net video sales generated from the play of video lottery games at each video lottery retail location.

(A) Minimum Sales Requirement: A new or existing video lottery retailer shall generate a minimum of \$200 in average net video sales per week per terminal. The Lottery shall calculate the average using any 90-day

ADMINISTRATIVE RULES

or greater time period determined by the Lottery. Net video sales are calculated by subtracting prizes awarded on a video lottery terminal from wagers placed on the terminal. The Director may remove one or more terminals from a retail location when the retailer is unable to meet the minimum sales requirement.

(B) **Comparative Sales Analysis:** Based on a per terminal average, the Director may give higher priority for the placement of video lottery terminals to a retailer that has higher actual or projected net video sales, and may remove video lottery terminals from a retailer that has lower actual net video sales.

(d) **Floor Space:** The Lottery requires each video lottery retailer to have a minimum amount of floor space per each video lottery terminal. A retailer with less than 360 square feet of retail floor space is not eligible to receive any video lottery terminals for that business. A retailer with 360 square feet of retail floor space may receive up to three video lottery terminals. For each 120 square feet of retail floor space over the required minimum square footage of 360 square feet, a retailer may be eligible for one additional video lottery terminal up to the maximum number of terminals permitted under Oregon law.

(A) **Retail Floor Space:** Total retail floor space includes all areas open to the public in the business including, but not limited to, restrooms and hallways, but does not include offices, kitchens, storage rooms, and any other areas not generally open to the public. Total retail floor space does not include any space or portion of the business that is a common area or is shared with other businesses, or that is not contiguous with the areas where the video lottery terminals are located or proposed to be located.

(B) **Removal of Terminals:** The Director may remove or limit the number of terminals in a business to bring it into compliance with the floor space standards.

(C) **Existing Retailers:** This section, unless otherwise provided, does not apply to existing video lottery retailers whose space requirements were determined under a previous version of this rule.

(2) **Miscellaneous Requirements:**

(a) **Restricted Visibility:** The Lottery will only place video lottery terminals in those areas of a business with restricted visibility from areas outside of the business, and from the view of dining or other areas where minors are permitted to linger. Under certain circumstances, Oregon Liquor Control Commission rules may permit minors in the same areas as properly placed video lottery terminals. This rule is not intended to override any OLCC exception.

(b) **Adjacent Businesses:** When two or more adjacent businesses appear to the Director to be a single business, or are operated by the same or commingled ownership, then the Lottery may limit such businesses to the maximum number of video lottery terminals permitted under Oregon law for one business as the total number of terminals authorized for both or more such businesses.

(3) **Reconsideration:** Upon written request by a video lottery retailer, the Director may reconsider any video lottery terminal allocation decision made under this rule pertaining to that retailer.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0040

Instant Ticket Vending Machines (ITVMs) Placement and Sales Requirements

(1) **Location Specifications:** The Director of the Lottery may give preference for placement of an ITVM on a retailer's premises if the retailer has:

(a) A minimum of 5,000 square feet of retail space and a minimum of four operating check-out lanes that accommodate shopping carts; or

(b) An arrival or departure waiting area for customers of commercial transportation; or

(c) A minimum of twelve operating bowling lanes; or

(d) A minimum of four operating diesel fuel pumps; or

(e) A location on an interstate highway interchange, a state highway, or on a direct access road to an interstate or state highway; or

(f) An interior location in a shopping mall with a minimum average traffic count of 50,000 people per week through the mall, and

(g) Average Scratch-it sales in excess of \$200 per week for one ITVM or \$400 for a maximum of two. A retailer's average Scratch-it sales shall be measured over a twelve-month period as determined by the Lottery

(2) **Director's Discretion Regarding Other Locations:** The Director may place an ITVM at any other location identified by the Director as serving the best interests of the Lottery.

(3) **Test Placement:** With the consent of the retailer, the Director may place an ITVM at any retail location as a test. The Director or the Director's designee shall determine the length and conditions of the test.

(4) **Stocking Machine:** A retailer must keep any ITVM on its premises fully stocked with a variety of Oregon Lottery games. If a retailer fails to replenish the ITVM as games are sold out, the Lottery may remove the machine. The Lottery may exempt a test machine from these stocking and replenishment requirements.

(5) **Removal of Machine:** At the discretion of the Director, an ITVM may be removed from a retailer's premises.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0050

Insurance Coverage

(1) **Requirements:** Each Lottery retailer must obtain and carry an insurance policy providing coverage for each item of Lottery equipment located on the retailer's premises against any claim, demand, suit, or action for property damage resulting in connection with installation, repair, removal, or use of the equipment. The Lottery shall determine a reasonable coverage amount that shall not be less than the replacement value of the equipment as determined by the Lottery. The State of Oregon, the Oregon State Lottery Commission, and the members, officers, employees, and agents of each shall be named as additional insureds on the insurance policy. The insurance policy shall be with an insurance company duly authorized and licensed to do business in Oregon.

(2) **Notice of Required Coverage:** The Lottery shall notify a retailer of the required coverage amount. A retailer must obtain an insurance policy for the required coverage amount within thirty days of issuance of the notice. Any retailer who enters into a retailer contract after the effective date of this rule must obtain an insurance policy for the required coverage amount before any equipment will be placed on the retailer's premises.

(3) **Increase in Coverage:** The Lottery may adjust the required dollar amount of insurance coverage to reflect the increased value of the lottery equipment as needed. The Lottery will notify Lottery retailers if an increase in coverage is needed. A retailer has thirty days from the date that notice of the increase is issued to obtain a policy that provides the increased amount of coverage.

(4) **Proof of Coverage:** A retailer that is required to maintain insurance coverage must supply proof of the insurance policy to the Lottery upon request of the Lottery.

(5) **Audits:** The Director may audit any Lottery retailer for compliance with this rule at any time including random compliance audits. The Lottery will conduct the audit during the retailer's regular business hours or at such other time as agreed upon by the retailer and the Lottery. The burden of proof to establish that a retailer complies with this rule is on the retailer.

(6) **Termination:** The Director may terminate the contract of a retailer who fails to comply with the provisions of this rule.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200, 461.217, 461.300

Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0060

Equipment Loss or Damage

(1) **Loss Claim Under \$2500:** The Lottery will charge a retailer for the actual cost of replacing, repairing, or removing lost, damaged, or destroyed Lottery equipment when the loss per occurrence is under \$2500 and, in the determination of the Director, the retailer did not exercise reasonable care to protect the equipment or acted intentionally. The Lottery may bill the retailer for the cost of replacing, repairing, or removing the equipment and may electronically sweep the retailer's account for this amount.

(a) **Vandalism, Criminal Mischief, Theft:** The Lottery will not charge a retailer for the cost of replacing or repairing such equipment in the following situations unless the loss, damage, or destruction could have been prevented by the exercise of reasonable care by the retailer:

(A) Vandalism, criminal mischief, theft, or loss occurring while the retailer is open to the public; or

(B) Vandalism, criminal mischief, theft, or loss occurring while the retailer is closed to the public if the retailer has activated an on-site alarm system designed to detect illegal entry and alert the retailer or law enforcement.

(b) **Ordinary Wear and Tear Excepted:** Lottery equipment lost, damaged, or destroyed as a result of ordinary wear and tear will not be attributed to a retailer's failure to exercise reasonable care.

(2) **Loss Claim of \$2500 or More:** When the amount of any loss, damage, or destruction to Lottery equipment at a retailer's premises is \$2500 or more per occurrence, the Lottery will report it to the State of Oregon Department of Administrative Services Risk Management Division in accordance with ORS Chapter 278. Any claim that the Lottery may have against a retailer arising from the loss, damage, or destruction of such prop-

ADMINISTRATIVE RULES

erty is subrogated to the Risk Management Division upon payment of the claim by Risk Management to the Lottery. Risk Management then may seek reimbursement from a retailer for the amounts it paid to the Lottery for replacement or repair of the lost, damaged, or destroyed equipment.

(3) Loss Management: At its option, the Lottery may repair, replace, or remove any lost, damaged, or destroyed Lottery equipment, none of which has any effect on a retailer's liability to the State of Oregon, if any, for the loss, damage, or destruction of such equipment.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200, 461.217, 461.300
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0070

Determination of Liability

(1) Investigation: The State of Oregon or the Lottery may initiate an investigation to determine whether a retailer failed to exercise reasonable care to protect the Lottery's equipment, or whether the retailer intentionally damaged, destroyed, or stole, or allowed others to damage, destroy, or steal Lottery equipment.

(2) Determination: If the State or the Lottery determines that the retailer failed to exercise reasonable care, acted intentionally, or allowed others to damage, destroy, or steal Lottery equipment, the retailer will be charged for the equipment loss pursuant to OAR 177-045-0060.

(3) Contract Termination: In addition to requiring payment for the loss, damage, or destruction of Lottery equipment, the Director may terminate the retailer contract of any Lottery retailer who failed to exercise reasonable care to protect the Lottery's equipment. The Director shall terminate the retailer contract of any Lottery retailer who intentionally damages, destroys, or steals or allows others to damage, destroy, or steal Lottery equipment.

(4) Threats: The Director may terminate the retailer contract of any Lottery retailer who threatens to damage or destroy Lottery equipment.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200, 461.217, 461.300
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

177-045-0080

Finality of Decisions

The decisions of the Director under this Division are final.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.200, 461.217, 461.300
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04

Oregon State Treasury Chapter 170

Adm. Order No.: OST 1-2004(Temp)

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-15-04 thru 7-12-04

Notice Publication Date:

Rules Adopted: 170-060-1000

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

Rules Coordinator: Sally Furze—(503) 378-4990

170-060-1000

Terms, Conditions, and Reporting Requirements for an Agreement for Exchange of Interest Rates

(1) Definitions:

(a) "Issuer" means a public body as defined in ORS 288.605, (excluding the State of Oregon and its Agencies) and the Oregon Health and Science University.

(b) "Counterparty" shall mean the party to an agreement for the exchange of interest rates other than the Issuer and any guarantor of that party's obligations.

(c) "Swap Policy" means the written policy regarding the use of agreements for the exchange of interest rates adopted by the Issuer.

(d) "MDAC" or "Commission" means the Oregon Municipal Debt Advisory Commission.

(e) Terms not otherwise defined herein shall have the meanings ascribed to them in ORS 287.014 to 287.029 as amended by Chapter 195, Oregon Laws 2003.

(2) Issuers shall only enter into agreements for the exchange of interest rates as authorized by, and in compliance with, ORS 287.014 to 287.029, as amended by Chapter 195, Oregon Laws 2003.

(3) The notional amount of an agreement that relates to outstanding obligations may not exceed the principal amount of those obligations. The

notional amount of an agreement that relates to obligations that the issuer expects to issue in the future may not exceed the principal amount of the obligations that the issuer reasonably expects to issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board as required by section 4 of this rule).

(4) With respect to an obligation or obligations that an Issuer has issued or will issue (as evidenced by a copy of the resolution, minutes of the board or other authorizing directive of the director or board), subject to Section 2, subsection 7, Chapter 195 Oregon Laws 2003, the Issuer may designate the particular obligation to which an agreement relates after execution of the agreement. Such a designation after execution of the agreement shall be considered an agreement modification, and the Issuer shall notify the MDAC of such modification in accordance with this rule.

(5) The Issuer shall have adopted a Swap Policy as part of its ongoing responsibility to manage its debt obligations. In adopting a Swap Policy, the Issuer should review and consider the current edition of the Government Finance Officers Association Recommended Practice: "Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy" and the "MDAC Sample Interest Rate Swap Policy". Included in the Swap Policy, the Issuer shall provide a general description of risks related to agreements for exchange of interest rates and the means by which the Issuer will address those risks. The Swap Policy shall also provide that an analysis of the risks and benefits of each agreement shall be presented to the governing body prior to executing such agreement.

(6) The Issuer shall notify the Commission of the execution of an agreement for the exchange of interest rates by delivering to the Debt Management Division of the Oregon State Treasury, 350 Winter Street NE, Suite 100, Salem, Oregon 97301 within 30-days of its execution, the following:

(a) An MDAC Form 3.

(b) An executed copy of the resolution, minutes of the board or other authorizing directive of the director or board, specifically authorizing the Issuer to engage and participate in an agreement for the exchange of interest rates. The authorization shall state the reason that the Issuer is authorizing the agreement, shall include a finding that the agreement is being executed for permitted purposes and complies with the authorizing act and this administrative rule.

(c) The Issuer's Swap Policy.

(d) The legal opinion, if any, addressing the validity of the Issuer's obligations under the agreement for the exchange of interest rates that is delivered in connection with the agreement.

(7) An agreement shall contain terms and conditions consistent with the Swap Policy adopted by the Issuer including, but not limited to:

(a) The notional amount of the agreement;

(b) Payment terms;

(c) The term of the agreement;

(d) Insurance, collateral or other assurances of payment provided in compliance with chapter 195, Oregon Laws 2003;

(e) Provisions for termination in advance of the scheduled term;

(f) Events of default and related remedies;

(g) Assurances that the counterparty will maintain a minimum rating by at least two nationally recognized rating agencies or that the counterparty's obligations will be collateralized;

(h) Modifications to standard ISDA swap documentation, as specified in the Schedule as may be required by the Issuer's policy or governing law;

(i) Limitations on allowable collateral and frequency of the valuation of such collateral; and

(j) Agreement valuation methodology.

(8) The Issuer shall notify, in writing, the MDAC of any material change in the Issuer's obligations or benefits under the agreement for the exchange of interest rates that results from a reduction in the ratings of the Issuer, a Counterparty or guarantor.

(9) Agreement Modification or Termination. If after executing an agreement for the exchange of interest rates, the agreement is modified or terminated for any reason prior to its stated end date, the Issuer shall notify the MDAC, in writing, within 30-days after completion of the modification and identify the reasons for such termination or modification and the anticipated change in obligation to the Issuer resulting from the termination or modification.

Stat. Auth.: ORS 287.014-287.029 & Ch. 195, OL 2003.
Stats. Implemented: ORS 287.014-287.029 & Ch. 195, OL 2003
Hist.: OST 1-2004(Temp), f. 1-14-04, cert. ef. 1-15-04 thru 7-12-04

ADMINISTRATIVE RULES

Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Adm. Order No.: ODA 1-2004

Filed with Sec. of State: 1-14-2004

Certified to be Effective: 1-14-04

Notice Publication Date: 12-1-03

Rules Amended: 583-030-0021, 583-030-0030, 583-030-0045

Subject: Clarifies jurisdiction of Private Career Schools office. Permits payment of ODA fees over time. Clarifies conditions under which ODA will use a hearing officer.

Rules Coordinator: Susan Taylor—(541) 687-7443

583-030-0021

Nondegree Certificates and Diplomas

(1)(a) A school that is authorized to grant a degree may also grant certificates in the same field without an independent review of the certificate, provided that the certificate is granted for completion of a specified set of courses approved in a degree curriculum as part of degree authorization.

(b) A school that is authorized to grant a degree and which wants to offer a certificate in a field in which the school is not authorized to grant a degree must apply for approval for the certificate. The process will be shorter and less elaborate than for a degree authorization and the fee will be that usually charged for external degree programs.

(c) A school that is not approved to grant any degrees in Oregon may apply for approval to grant certificates. Application must be made to the Private Career Schools office of the Oregon Department of Education, not to ODA.

(d) A school providing religious education does not require ODA approval in order to issue certificates or diplomas unless academic credit usable toward a degree is formally granted by the school. Such schools are under the jurisdiction of the Private Career Schools office of the Oregon Department of Education.

(2) A school that can offer neither an authorized nor exempted degree to students who complete a postsecondary program may be permitted by the Office to issue a diploma or certificate under conditions that will not mislead the student or the public to think it is a degree. If such diploma or certificate represents two or more academic years of study or is titled in a way that could lead someone to confuse it with a degree, the Office at its discretion may require the school to print an approved disclaimer of degree offer on the inside front cover or facing page of its catalog.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04

583-030-0030

Application Procedure

(1) A school seeking initial degree authorization should allow three months to prepare its application and six additional months for review by the Office. Approval of exempt degrees and abbreviated reviews for certain external or semi-residential degrees may require less time. To be considered timely, application for renewal of an existing authorization must be completed six months before that authorization expires, and a school seeking renewal is fully responsible for beginning the procedure.

(2) In order to be valid, application must be made by the method determined by the Office, including completion according to instruction of any forms provided for the purpose. Modification will be allowed by explicit permission only. The applicant school shall submit any information requested by the Office and may submit such supplemental information as it considers pertinent. The Office will provide advice.

(3) An applicant school shall disclose any business or other relationship with another organization or person that may influence decisions taken by the school in a matter other than content of courses. The school shall furnish such information concerning the other organization or person and the relationship as the Office may direct. Concealment of such a relationship or failure to supply relevant information as directed is a basis for rejection of an application.

(4) Resumes or biographical outlines for owners, governing board members, officers, administrators, and teachers associated with the applicant school or its parent organization shall be submitted in the form determined by the Office. After the initial application is transmitted and before the Office has acted on it, the school shall submit the resume of any new such principal or employee immediately for inclusion with the application materials. Program approval may be made conditional on approval of employees hired after the approval date.

(5) Application for authorization to offer an academic degree, or to provide services leading to a degree in whole or in part, must be accompanied by payment of the fee described in OAR 583-030-0046 or such reduced fee as is determined by the Office in special circumstances. If a school has limited financial resources, ODA may at its discretion allow payment of fees over a period of time not to exceed two years from the date of initial approval. In the event that an initial application is successful, payment in full must be received before application for renewal can be accepted. In the event that initial application is not successful, payment in full of the review fee must be completed within two years of the date of formal denial of the application. Any proposed payment plan must be evaluated and, if adequate, approved by the OSAC chief financial officer. ORS 348.606(3) prohibits fee refunds.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603, 348.606

Hist.: ECC 22, f. & cert. ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04

583-030-0045

Revocation of Authorization

(1) The Oregon Student Assistance Commission on recommendation by the Office, after a hearing before a hearing officer appointed by the Commission, may under ORS 348.612 revoke or suspend authorization given to a school to confer or offer to confer degrees in or from Oregon, or to offer instruction or related services in or from Oregon purporting to lead to a degree in whole or in part. Revocations resulting from a change in state or federal law or judicial ruling do not require the use of a hearing officer.

(2) A hearing to consider a proposed revocation or suspension shall be held only after the affected school has been given written notice of the time and place of such hearing 20 days in advance.

(3) Revocation or suspension of degree authorization applies to a school as a whole, inasmuch as failure to satisfy any state requirement for offer of any degree constitutes failure to satisfy all requirements applicable to the school. Refusal by a school to discontinue any standard offer or practice, regardless of the quality of any other offer or practice, will lead ODA to propose revocation or suspension of approval and/or civil or criminal action.

(4) A school whose degree authorization is revoked shall be considered for reinstatement only after one year and only when the Office is satisfied that causes of the revocation have been entirely removed. Application for reinstatement from a school in revoked status shall comply with all requirements for a new applicant.

(5) A school whose degree authorization is suspended shall be considered for reinstatement only when the Office is satisfied that causes of the suspension have been entirely removed. Application for reinstatement from a school in suspended status shall comply with all requirements for a renewing applicant.

(6) Grounds for revoking or suspending the degree authorization of a school include changes in state or federal law or judicial rulings affecting the status of a school or its failure to provide services it has guaranteed to students in writing; failure to supply records and other information to the Office as directed; falsification of any information supplied to the Office, students, or the public; failure to comply with all requirements of OAR 583-030-0016, 583-030-0020, 583-030-0021, 583-030-0022, 583-030-0030, 583-030-0035, 583-030-0036, 583-030-0037, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0044, and 583-030-0046; and failure to prove to the satisfaction of the Office on request compliance with any such requirement with respect to which the school's current performance is questioned specifically by the Office as a result of routine monitoring or individual complaint.

(7) Revocation or suspension requires a school immediately to cease and desist from offering in or from Oregon any degree, or instruction or related services purporting to lead to a degree in whole or in part, except that the Commission at its discretion may permit a revoked or suspended school to complete an academic term already in progress on the date of the action. During such period of completion the school may not enroll new students, and it may not offer to those already enrolled any instruction or services purporting to lead to a degree that would be earned and conferred later than the immediate end of the term in progress. Completion of such term with good faith and fair dealing toward currently enrolled students, or reasons for failure to so complete the term, shall be factors in any subsequent consideration of a revoked or suspended school for reinstatement.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603, 348.606, 348.612

Hist.: ECC 22, f. & cert. ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. & cert. ef. 7-7-00; cert. ef. 7-20-00; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04

ADMINISTRATIVE RULES

Oregon University System Chapter 580

Adm. Order No.: OSSHE 6-2003
Filed with Sec. of State: 12-24-2003
Certified to be Effective: 12-24-03
Notice Publication Date: 11-1-03
Rules Amended: 580-040-0035
Subject: To establish tuition and fees for Summer Session 2004, including room and board rates.
Rules Coordinator: W. Alayne Switzer—(541) 346-5795

580-040-0035

Summer Session Fee Book

The document entitled "Summer Session Fee Book" dated December 19, 2003 is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03

Parks and Recreation Department Chapter 736

Adm. Order No.: PRD 1-2004(Temp)
Filed with Sec. of State: 1-15-2004
Certified to be Effective: 1-15-04 thru 3-31-04
Notice Publication Date:
Rules Amended: 736-010-0022
Subject: Amends existing rule to be consistent with statutory changes resulting from House Bill 2759 and allows rule to remain consistent with ORS 153.018.
Rules Coordinator: Angie Springer—(503) 986-0719

736-010-0022

Fines

(1) Any person, firm or corporation violating any park rule commits a Class A, B, C, or D violation punishable, upon conviction, by a fine as provided in ORS 153.018(2).

(2) Each occurrence of a violation of a park area rule shall be considered a separate offense.

Stat. Auth.: ORS 284 & 390

Stats. Implemented: ORS 390.050 & 390.111

Hist.: PR 5-1983, f. & ef. 3-30-83; PRD 2-2000(Temp), f. & cert. ef. 1-14-00 thru 7-12-00; PRD 6-2000, f. & cert. ef. 5-9-00; PRD 1-2004(Temp), f. & cert. ef. 1-15-04 thru 3-31-04

Adm. Order No.: PRD 2-2004
Filed with Sec. of State: 1-15-2004
Certified to be Effective: 1-15-04
Notice Publication Date: 10-1-03
Rules Amended: 736-001-0000

Subject: Amends the language in OAR 736-001-0000 in order for the department to be able to adopt temporary emergency rules should the need arise.

Rules Coordinator: Angie Springer—(503) 986-0719

736-001-0000

Notice of Proposed Rules

Prior to the adoption, amendment or repeal of any permanent rule, the Oregon Parks and Recreation Commission shall give notice of the intended action:

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

(2) By mailing a copy of the notice to persons on the Oregon Parks and Recreation Commission's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule; and

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

- (a) The Associated Press;
- (b) Associated Oregon Industries; and
- (c) Associated General Contractors.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(4)

Hist.: 1 OTC 67, f. & ef. 1-9-76; PR 2-1990, f. & cert. ef. 7-10-90; PR 7-1992, f. & cert. ef. 11-12-92; PR 12-1994, f. & cert. ef. 12-5-94; PRD 2-2004, f. & cert. ef. 1-15-04

Adm. Order No.: PRD 3-2004
Filed with Sec. of State: 1-15-2004
Certified to be Effective: 1-15-04
Notice Publication Date: 10-1-03
Rules Adopted: 736-002-0020, 736-002-0030, 736-002-0040, 736-002-0060, 736-002-0070, 736-002-0080, 736-002-0090, 736-002-0100

Subject: House Bill 2207 (Oregon Law 2003, Chapter 200) expands the department's authority to conduct criminal records checks for the purposes of employment decisions. The department already conducts Criminal Records Checks for employees with enforcement authority and management positions. The department intends to use the State of Oregon Law Enforcement Data System (LEDS) to conduct the checks. The information obtained through this system is confidential. The individual may appeal a decision to disqualify them for a position through a contested case process, applicable personnel rules or collective bargaining provisions.

Rules Coordinator: Angie Springer—(503) 986-0719

736-002-0020

Statement of Purpose and Applicability, Statutory Authority

(1) The purpose of these rules is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior or abuse that is incompatible with assigned duties and the Department's mission, or makes them otherwise unfit to perform the duties of the position.

(2) These rules are to be applied when evaluating the criminal history of a subject individual and conducting a fitness determination based on such history. These rules and the appeal process described in these rules are not to be used for any other purpose. The fact that a subject individual is determined to be fit does not guarantee employment.

(3) These rules are authorized under ORS 181.537, 181.010 to 181.560, 181.715 to 181.730, 390.050, and 390.124

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0030

Definitions

The following definitions are used for the purposes of this Oregon Administrative Rule.

(1) "Actively Supervised" means that a supervisor (a staff or management employee designated by management as responsible for training, direction, or supervision of the subject individual) must be in close proximity to the subject individual throughout the workday, and must be in a position to observe and direct the activities of the subject individual at times during the work day.

(2) "Administrator" means the Director of the Oregon Parks and Recreation Department, or a person who is an Assistant Director of the Department, or the Manager of a division or major program office within the Department.

(3) "Agency Agreement" means a written agreement between the Oregon State Police and the Department that authorizes the Department to receive criminal offender information, and which specifies the terms and conditions of accessing and receiving Oregon computerized criminal history information.

(4) "Agency LEDS Representative" means a Department employee who has been designated by the Department Director and has been cleared by the Oregon State Police to have access to the Law Enforcement Data System (LEDS). This representative serves as the primary contact for matters regarding the LEDS and is responsible for authorizing other users of the LEDS.

(5) "Authorized Employee" means a Department employee who has been cleared by the Oregon State Police by means of a computerized crim-

ADMINISTRATIVE RULES

inal history CCH record check and fingerprinting to review Oregon and nationwide criminal offender information, and who is authorized to make determinations regarding an subject individual's fitness for a position and make recommendations regarding such determinations.

(6) "Computerized Criminal History (CCH) System" means the computerized criminal offender information maintained by the OSP under provisions of Oregon law.

(7) "Crime" means a felony or a misdemeanor as designated in Oregon or federal law, or a substantially equivalent law in any other jurisdiction.

(8) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders, and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release. This includes the Oregon State Police (CCH) System and any information the Department of State Police may have in its possession from its central bureau of criminal identification, including manual and computerized information. This also includes Criminal Offender Information from the FBI or other jurisdictions.

(9) "Department" means the Oregon Parks and Recreation Department or any division or office of the Department.

(10) "FBI" means the Federal Bureau of Investigation.

(11) "National/International Criminal Offender Information" means criminal offender information compiled and maintained by the Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(12) "Law Enforcement Data System (LEDS)" means a program organized within the Oregon State Police, Law Enforcement Data System Division, which provides a criminal justice telecommunications and information system for the State of Oregon, and is the control point for access to similar programs operated by other states and the federal government.

(13) "Nationwide Criminal History Check" means a review by the Department of criminal history from outside Oregon's borders. This information may be obtained from the FBI through the use of fingerprint cards and from other criminal information resources.

(14) "Offense" means conduct for which a sentence to a term of imprisonment or a fine is provided by any law of this State or by any law or ordinance of a political subdivision of this State. An offense is either a crime, a violation or an infraction.

(15) "OSP" means the Department of Oregon State Police and includes the Identification Services Section and the Law Enforcement Data System.

(16) "Potentially Disqualifying Crime(s)" means one or more criminal convictions that necessitate a fitness determination.

(17) "Probationary Status" means a condition in which a subject individual may be allowed to work, volunteer or be trained pending a criminal records check and determination.

(18) "Subject Individual" means a person who is required to complete a criminal record check pursuant to these rules and includes:

(a) A person who has applied for or been offered employment by the Department.

(b) A person who has authority to issue a citation for rule enforcement.

(c) A volunteer over whom the Department has direction and control, and who is registered with the Department's Volunteer Program.

(d) Subject individual does not include unregistered volunteers.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0040

Process for Criminal History Records Check

(1) The Department and its divisions will use criminal offender information in making employment decisions.

(2) Criminal offender information will be obtained through the LEDS system or other criminal history information resources. In conducting criminal history records checks on subject individuals, the Department shall act in accordance with ORS 181.010 to 181.560, 181.715 to 181.730, 390.050, Public Law 92-544, and the Agency Agreement.

(3) Prior to conducting a criminal history records check, the subject individual shall complete and sign an authorization and self-declaration form that:

(a) Contains the name, address and date of birth of the subject individual,

(b) A statement that subject individual has not been convicted of a crime, or, if the subject individual has been convicted of a crime, contains a description of the crime and the particulars of the conviction,

(c) Notifies the subject individual that the Department may request a nationwide criminal history records check,

(d) Notifies the subject individual that the Department may request a set of fingerprints; and,

(e) Notifies the subject individual of their rights:

(A) To obtain a copy of their criminal offender information,

(B) To challenge the accuracy and completeness of any information contained in a criminal history report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department,

(f) Notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law.

(4) If it is determined through the LEDS system that the subject individual's record indicates a felony conviction, the Department may obtain and forward fingerprint cards to OSP for a positive identification verification.

(5) When conducting a criminal history records check on a subject individual, the Department may use fingerprint records to conduct a nationwide or international criminal history check under any of the following circumstances:

(a) The subject individual has lived outside the state of Oregon for 60 or more consecutive days during the preceding five years; or

(b) If the LEDS check, or any other information obtained by the Department indicates a criminal offender history outside of Oregon, or if the subject individual self-discloses criminal history outside of Oregon; or

(c) If the Oregon check reveals a recent out-of-state driver's license;

or

(d) If the social security number provided does not appear to be the subject individual's social security number; or

(e) If the Department has other reason to question the identity or history of the subject individual; and,

(f) It is not possible to conduct a criminal history check directly through the state in which the subject individual resided.

(6) Upon receipt of a criminal history check report lacking disposition data, the Department shall conduct research in whatever record keeping systems are available in order to obtain complete data.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0060

Responsibilities in Maintenance and Use of Information

(1) The Department shall assure strict compliance with federal and state laws, rules and procedures in obtaining and handling criminal offender information.

(2) Criminal offender information obtained from the OSP, the FBI or any other entity shall not be used for any purpose other than employment decisions; nor shall it be disseminated to unauthorized persons or agencies. Any violation may cause immediate suspension of the Department's authorization to access such information.

(3) Only authorized employees shall have access to and review criminal offender information of subject individuals.

(4) All criminal offender information is confidential and shall be maintained in locked file cabinets, accessible only for purposes directly connected with the administration of these rules, until it is destroyed. This includes any summaries or facsimiles of the criminal offender information.

(5) Destruction of Information: The Department shall destroy all criminal offender information, including fingerprint cards, in accordance with the Department's records retention schedule, and state and federal laws.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0070

Crimes to be Considered

(1) When the Department is conducting a criminal history check on a subject individual, that person is required to report whether he or she has:

(a) Been convicted of any of the crimes listed in this rule;

(b) Been convicted of any attempt to commit, solicitation to commit or conspiracy to commit any crime listed in this rule;

(c) Been convicted of the substantial equivalent of any crime listed in this rule if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(d) Been convicted of any attempt to commit, solicitation to commit or conspiracy to commit the substantial equivalent of any crime listed in

ADMINISTRATIVE RULES

this rule if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number.

(2) Crimes:

(a) Giving or receiving bribes, coercion;

(b) Perjury, false swearing, giving false statements, criminal tampering;

(c) Fraud, embezzlement, falsifying records, misapplication of entrusted property, criminal impersonation, unlawfully obtaining public assistance;

(d) Escape, unauthorized departure, resisting arrest, fleeing or attempting to elude police, assault of public safety officer;

(e) Supplying contraband, racketeering, promoting or compelling prostitution;

(f) Obstructing governmental or judicial administration, interfering with peace officer or hindering prosecution;

(g) Official misconduct or misuse of confidential information;

(h) Criminal homicide, aggravated murder, murder, manslaughter, or negligent homicide;

(i) Assault, menacing, harassment, intimidation, or stalking;

(j) Kidnapping, custodial interference, child abuse, neglect, endangerment, or abandonment;

(k) Rape, sodomy, incest, unlawful sexual penetration, sexual abuse, or sexual misconduct;

(l) Public indecency, sexual conduct involving a child, furnishing, displaying or disseminating obscene materials to minors;

(m) Burglary, criminal trespass, unlawful entry, robbery, theft, arson;

(n) Computer crime;

(o) Forgery, possession of forged instrument, or possession of a forgery device;

(p) Fraudulent use of credit card, negotiating a bad check;

(q) Treason, riot, disorderly conduct, criminal mischief;

(r) Abuse of venerated objects, abuse of memorial to the dead, or abuse of corpse;

(s) Unlawful use or possession of a weapon, firearm or destructive device;

(t) Animal abuse, neglect, or abandonment, poaching or game violations;

(u) Unlawful operation of a private school, residential program for children uncertified foster home, or uncertified child care facility;

(v) Providing liquor to a person under 21 or to an intoxicated person;

(w) Selling or possession of drugs, drug equipment, unlawful delivery of controlled substance, distribution of controlled substance to minors, manufacture or delivery of controlled substance to minor

(x) Reckless driving, criminal driving while suspended or revoked or in violation of a permit, hit and run vehicle, driving under the influence of intoxicants;

(y) Theft, damage or destruction of natural, cultural or historic resources;

(z) Other felony or misdemeanor convictions not specifically listed that are crimes against another person or crimes against property.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0080

Criteria for Determination of Fitness

(1) The authorized employee shall review all criminal offender information, determine fitness for employment with respect to that information, and make employment recommendations based on such determination.

(2) Subject individuals who fail to consent to a criminal history records check or fail to be fingerprinted shall not be employed or shall be terminated from employment.

(3) For criminal history purposes, a determination as to whether a subject individual is fit to hold a position when that individual has consented to a criminal records check and has not failed to be fingerprinted, shall be based on:

(a) The criminal offender information obtained by the Department; and

(b) Any false statements made by the subject individual regarding the criminal history of the subject individual.

(4) In reviewing the convictions included in the criminal offender information, the following shall be considered:

(a) The nature of the crime;

(b) The facts that support the conviction;

(c) The relevancy of the criminal conviction history to the specific requirements of the subject individual's present or proposed employment;

(d) Intervening circumstances relevant to the responsibilities and circumstances of the employment. Such circumstances include but are not limited to:

(A) Passage of time since the commission of the crime;

(B) The age of the person at the time of the crime;

(C) The likelihood of a repetition of offenses;

(D) The commission of other relevant crimes, including the type and number of offenses;

(E) The recommendation of an employer.

(5) The subject individual may, at the discretion of the Appointing Authority, commence the performance of work on a probationary basis before or upon a preliminary determination of fitness pursuant to subsections (3) and (4) of this section, but prior to the return of the nationwide criminal record check if the subject individual is actively supervised.

(6) Under no circumstances shall a subject individual be barred from employment because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0090

Notice of Adverse Fitness Determination

The Department shall inform subject individuals who have been determined not to be fit, via certified mail, of such disqualification. The notice will indicate that the subject individual:

(1) Has a right to inspect and challenge their Oregon criminal offender information in accordance with the OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;

(2) May challenge the accuracy or completeness of any entry on the subject individual's criminal records obtained from the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC, 20537-9700; and

(3) May appeal the Department's determination of fitness through the process described in this rule.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

736-002-0100

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing.

(1) The subject individual must notify the Department in writing of their intent to challenge the fitness determination and to request a contested case hearing not later than ten calendar days from the date the subject individual received the denial notice. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) The Department has no jurisdiction over allegations that the criminal offender information received from OSP, the FBI or other entities is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) The Department is entitled to rely on the criminal offender information supplied by OSP, the FBI or other entities until the Department is notified that the information has been changed or corrected.

(4) Any contested case hearing under this rule is not open to the public.

(5) Prior to the contested case hearing being scheduled, a mandatory pre-hearing conference between the Department and the subject individual shall be convened to review all available information and determine the need for a contested case hearing. The subject individual may bring legal counsel or other representation. At the pre-hearing conference, the subject individual must verify whether the individual has used the right to inspect or challenge their criminal offender information record(s) or has declined to do so.

(6) If the Department reverses the denial as a result of the pre-hearing conference, no hearing will be held. If the Department upholds the denial, a hearing must be held unless the subject individual withdraws the request for a contested case hearing in writing.

(7) The hearing must be conducted in accordance with the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 et seq.

(8) The issues at a contested case hearing shall be limited to:

(a) Whether the subject individual has made a false statement as to the non-conviction of a crime;

(b) Whether the criminal offender information provided to the Department by OSP, the FBI or other entities describes any crime that the Department has determined is relevant to employment;

ADMINISTRATIVE RULES

(c) Whether the Department's determination that the nature of the crime for which the subject individual was convicted is relevant to the position which the subject individual is seeking or holds; and,

(d) Whether the Department considered the relationship of the facts that support the conviction and all intervening circumstances to the position at issue in determining the fitness of the subject individual to hold the position.

(9) The Director shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Director of the Department or his/her designee.

(10) The hearing officer must be provided with a complete copy of the criminal history check information.

(a) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain certified copies of the FBI criminal history report, or a certified copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual must provide copies of such documentation to the hearings officer at least seven days prior to the scheduled hearing.

(b) In the case of Oregon criminal history, the Department must provide a copy of the LEDS printout to the hearings officer.

Stat. Auth.: ORS 390.124, Other Auth. HB 2207 (2003 Legislative Session)

Stats. Implemented: ORS 181.537(10)

Hist.: PRD 3-2004, f. & cert. ef. 1-15-04

Public Utility Commission Chapter 860

Adm. Order No.: PUC 1-2004

Filed with Sec. of State: 1-8-2004

Certified to be Effective: 1-8-04

Notice Publication Date: 12-1-03

Rules Adopted: 860-012-0100, 860-012-0190

Subject: Senate Bill 205 authorizes the Commission to approve written agreements for intervenor funding grants between electric and natural gas utilities and organizations representing broad customer interests. OAR 860-012-0100 details the requirements for an intervenor to be certified as eligible for an intervenor funding grant. OAR 860-012-0190 explains how and why certification could be canceled and the consequences of such action.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-012-0100

Grant Eligibility (Precertification and Case-Certification)

(1) Definitions:

(a) "Agreement" means a Commission approved agreement under ORS 234, OR Laws 2003 between a utility providing electricity or natural gas and a not-for-profit organization that represents broad customer interests in Commission regulatory proceedings.

(b) "Grant" means financial assistance to an intervenor under the terms of an agreement.

(2) General. Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine eligibility for a grant. Only parties that are precertified, or parties that become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the agreement.

(3) Precertification. The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-012-0190.

(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;

(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(D) The organization's members, who are customers of one or more of the utilities that are parties to the agreement, contribute a significant por-

tion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

(4) Case-Certification. Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;

(b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(d) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant;

(e) The organization demonstrates that:

(A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Stat. Auth.: ORS 234, OL 2003

Stats. Implemented: ORS 234, OL 2003

Hist.: PUC 1-2004, f. & cert. ef. 1-8-04

860-012-0190

Termination of Eligibility — Decertification

(1) Termination of Eligibility. Upon the filing of a complaint pursuant to ORS 756.500 or upon a Commission investigation or motion pursuant to ORS 756.515, the Commission may terminate the precertification or case-certification of an intervenor if it finds that:

(a) The organization has committed fraud, misrepresentation, or misappropriation related to any grant made available under the terms of a Commission-approved agreement;

(b) In a proceeding before the Commission for which grants were awarded to the organization, the organization has failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification;

(c) The organization has failed to comply with Commission orders or rules in a material way;

(d) The intervenor who is signatory to an agreement has violated terms and conditions of the agreement pertaining to the use and disclosure of information required to be provided by utilities under the agreement;

(e) For the Citizens' Utility Board of Oregon (CUB), there has been a substantial change in or repeal of ORS 774.101 through 774.990; or

(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-012-0100(3).

(2) An intervenor that is decertified under paragraph (1)(d) will be ineligible for future precertification or case-certification under the agreement.

(3) Termination of the precertification or case-certification of an intervenor shall be prospective only.

Stat. Auth.: ORS 234, OL 2003

Stats. Implemented: ORS 234, OL 2003

Hist.: PUC 1-2004, f. & cert. ef. 1-8-04

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

Filed with Sec. of State: 1-9-2004

Certified to be Effective: 1-9-04 thru 7-2-04

Notice Publication Date:

Rules Amended: 860-021-0200, 860-034-0010, 860-034-0140, 860-036-0040, 860-037-0035

Subject: Clarifies amendments to Divisions 012, 036 and 037 previously adopted by the Commission and incorporates language to

ADMINISTRATIVE RULES

make Division 034 consistent with other sections regarding a waiver of rule requirements.

Rules Coordinator: Lauri Salsbury—(503) 378-4372

860-021-0200

Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous utility service of the same type applied for (energy or telecommunications) during the preceding 24 months and the utility can verify, either by contacting the former utility or through an authorized letter provided by former utility on utility letterhead to include dates of service and presented by the applicant, customer or former utility, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the energy or large telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the energy or large telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in subsection (1) of this rule, a utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon energy or telecommunications utility, as defined in ORS 757.005 or 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon utility as defined in ORS 757.005 or 759.005, was found to have tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service.

(4) In lieu of paying a deposit, an applicant or customer may:

(a) Provide the energy or large telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit; or

(b) For energy utilities, elect to use demand limiter or "pay as you go" metering, if equipment is available.

(5) For energy utilities, a deposit required under this rule shall not exceed one-sixth the amount of reasonable estimated billing for 12 months at rates then in effect. This estimate shall be based upon actual use at the premises during the prior 12 months, if known, or will be estimated based upon the type and size of the equipment at the premises. Each deposit shall be rounded to the nearest whole dollar.

(6) For large telecommunication utilities, a deposit required under these rules shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The large telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(7) A new or additional deposit, calculated as provided by sections (4) and (5) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The energy or large telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The energy or large telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service;

(c) For energy utilities, a customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit; or

(d) For large telecommunications utilities, if service records for the customer indicates unbilled intraLATA toll activity under the utilities' tariff and price list is greater than the basis of the prior deposit.

(8) Paying a deposit does not excuse a customer from complying with the energy or large telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(9) An energy or large telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

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

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1981, f. & ef. 8-10-81 (Order No. 81-498); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-21-040; PUC 5-1989(Temp), f. & cert. ef. 4-19-89 (Order No. 89-493); PUC 13-1989, f. & cert. ef. 9-12-89 (Order No. 89-1173); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04

860-034-0010

Scope of the Rules

(1) The adoption of these rules shall not preclude the Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard upon a complaint, Commission motion, or small telecommunications utility application. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law. Upon application by a small telecommunications utility, the Commission may relieve the small telecommunications utility of any obligations under these rules.

(2) The rules contained in this division apply exclusively to telecommunications cooperatives and small telecommunications utilities as defined in section (3) of this rule.

(3) As used in this division:

(a) "Small telecommunications utility" means a telecommunications utility partially exempt from regulation under ORS 759.040;

(b) "Telecommunications utility" has the meaning given the term in ORS 759.005;

(c) "Telecommunications cooperative" or "Type 1 cooperative" means an unincorporated association or cooperative corporation that provides telecommunications services; and

(d) "Type 2 cooperative" means an unincorporated association or cooperative corporation that charges joint rates or provides through services as defined in OAR 860-034-0015.

Stat. Auth.: ORS 183, 756 & ORS 759

Stats. Implemented: ORS 756.040, 759.045, 759.220 & ORS 759.225

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04

860-034-0140

Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous telecommunications utility service during the preceding 24 months and the small telecommunications utility can verify, either by contacting the former utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the small telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the small telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

ADMINISTRATIVE RULES

(2) In addition to the methods of demonstrating satisfactory credit set forth in subsection (1) of this rule, a small telecommunications utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon telecommunications utility or telecommunications cooperative, as defined in ORS 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon telecommunications utility or telecommunications cooperative as defined in ORS 759.005, was found to have tampered with other telecommunications utility facilities, or was otherwise found to have diverted telecommunications utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the small telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for telecommunications service shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The small telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The small telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The small telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service; or

(c) If service records for the customer indicates unbilled intraLATA toll activity under the small telecommunications utility's tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the small telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A small telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

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

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04

860-036-0040

Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water utility service during the preceding 24 months and the water utility can verify, either by contacting the former water utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in subsection (1) of this rule, a water utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water utility service from it or any Oregon water utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water utility as defined in ORS 757.005, was found to have tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water utility service shall not exceed one-sixth the amount of reasonable billing for one year at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior year or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water utility discovers that the customer has stolen water utility service, has tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(6) Paying a deposit does not excuse a customer from complying with the water utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & ORS 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04

860-037-0035

Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water/wastewater utility service type during the preceding 24 months and the new water/wastewater utility can verify, either by contacting the former water/wastewater utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water/wastewater utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water/wastewater utility can verify, indicating that the applicant or customer receives a regular source of income.

ADMINISTRATIVE RULES

(2) In addition to the methods of demonstrating satisfactory credit set forth in subsection (1) of this rule, a water/wastewater utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water/wastewater utility service from it or any Oregon water/wastewater utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water/wastewater utility as defined in ORS 757.005, was found to have tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water/wastewater utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water/wastewater utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water/wastewater utility service shall not exceed one-sixth the amount of reasonable billing for 12 months at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior 12 months or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water/wastewater utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water/wastewater utility discovers that the customer has stolen water/wastewater utility service, has tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water/wastewater utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water/wastewater utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & ORS 757
Stats. Implemented: ORS 756.040, 757.005 & ORS 757.061
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04

Adm. Order No.: PUC 3-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 10-1-03

Rules Adopted: 860-032-0510, 860-032-0520

Rules Repealed: 860-035-0010, 860-035-0020, 860-035-0030, 860-035-0040, 860-035-0050, 860-035-0060, 860-035-0070, 860-035-0080, 860-035-0090, 860-035-0100, 860-035-0110, 860-035-0120, 860-035-0130

Subject: This rulemaking specifies how telecommunications carriers may use and disclose Customer Proprietary Network Information and how customer service record information may be transmitted from one carrier to another when a customer seeks to change carriers. In addition, all of Division 035 is being repealed because it is obsolete.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-032-0510

Customer Proprietary Network Information (CPNI)

(1) The purpose of this rule is to specify requirements under which telecommunications carriers may use, disclose, or permit access to customer proprietary network information. This rule does not relieve telecommunications carriers of any requirements imposed by the Federal Communications Commission (FCC) regarding Customer Proprietary Network Information in 47 Code of Federal Regulations (CFR), Part 64, §64.2001 through §64.2009, or by Section 222 of the Communications Act of 1934, as amended (47 USC 222)

(2) This rule applies to all telecommunications carriers providing intrastate telecommunications service in Oregon, except that it applies to telecommunications cooperatives only for services which are subject to the Commission's jurisdiction pursuant to ORS 759.220 and 759.225.

(3) For purposes of this rule, the following definitions apply:

(a) "Aggregate customer proprietary network information" or "Aggregate CPNI" means collective CPNI data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(b) "Carrier" or "telecommunications carrier" means any provider of intrastate telecommunications service as defined in ORS 759.005(2). "Carrier" or "telecommunications carrier" includes competitive providers, telecommunications cooperatives, and telecommunications utilities

(c) "Customer" means a subscriber, end-user, or consumer of carrier services or an applicant for carrier services.

(d) "Customer proprietary network information" or "CPNI" means individual customer information that a carrier accumulates in the course of providing telecommunications service to the customer. CPNI includes information that relates to type, quantity, technical configuration, destination, location, billing amounts, and usage data. CPNI also includes information contained in bills pertaining to telecommunications service received by a customer, except that CPNI does not include subscriber list information.

(e) "Subscriber list information" means the listed names of subscribers of a carrier and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of establishment of service), or any combination of such listed names, numbers, addresses, or classifications.

(4) Except as required by law or with approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of telecommunications service shall only use, disclose, or permit access to CPNI in its provision of:

(a) The telecommunications service from which such information is derived; or

(b) Services necessary to, or used in, the provision of such telecommunications service, including publishing of directories and billing.

(5) A telecommunications carrier shall disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer.

(6) A telecommunications carrier that obtains CPNI by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate CPNI for any lawful purpose. However, a telecommunications carrier may use, disclose, or permit access to aggregate CPNI other than for purposes described in subsection (4) of this rule only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions, upon reasonable request therefor.

(7) Nothing in this rule prohibits a telecommunications carrier from using, disclosing, or permitting access to CPNI obtained from its customers, either directly or indirectly through its agents:

(a) To initiate, render, bill, or collect for telecommunications services;

(b) To protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(c) To provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.030
Hist.: PUC 3-2004, f. & cert. ef. 1-15-04

860-032-0520

Customer Service Records (CSRs)

(1) The purpose of this rule is to provide for an exchange of information, in order to ensure that a requesting Local Service Provider (LSP) has enough customer information from the current LSP, so a customer can migrate local exchange service from one LSP to another in a seamless and timely manner, without delays or unnecessary procedures. This rule does

ADMINISTRATIVE RULES

not relieve carriers of any requirements imposed by either the Federal Communications Commission (FCC) regarding Customer Proprietary Network Information in 47 Code of Federal Regulations (CFR), Part 64, §64.2001 through §64.2009, or by Section 222 of the Communications Act of 1934, as amended (47 USC 222).

(2) This rule:

(a) Applies to telecommunications carriers without an approved interconnection agreement with the requesting LSP that addresses requirements covered by this rule.

(b) Does not apply to telecommunication cooperatives.

(c) Does not apply to telecommunications carriers with an interconnection agreement with the requesting LSP, which is approved pursuant to OAR 860-016-0020 through 860-016-0030, that addresses requirements covered by this rule.

(3) For purposes of this rule, the following definitions apply:

(a) "Carrier" or "telecommunications carrier" means any provider of intrastate telecommunications service as defined in ORS 759.005(2). "Carrier" or "telecommunications carrier" includes competitive providers and telecommunications utilities.

(b) "Circuit ID" means circuit identification number of a loop.

(c) "Commission" means the Public Utility Commission of Oregon.

(d) "Competitive local exchange carrier" or "CLEC" means a competitive provider as defined in OAR 860-032-0001 that provides local exchange service.

(e) "Customer" means a subscriber, end-user, or consumer of local exchange services or an applicant for local exchange services.

(f) "Customer service record" or "CSR" means the customer's account information, which includes the customer's address, features, services, and equipment.

(g) "Customer proprietary network information" or "CPNI" has the meaning given in OAR 860-032-0510.

(h) "Current LSP" means the LSP from whom a customer receives local exchange service prior to migrating to another LSP. After migration occurs, the current LSP becomes the customer's old LSP.

(i) "Local exchange service" has the meaning given in OAR 860-032-0001.

(j) "Local service provider" or "LSP" means the carrier that interacts directly with the customer and provides local exchange service to that customer. Based on the service configuration, an LSP can also be the NSP. In some cases, the following more specific designations may be used:

(A) "New local service provider" or "new LSP" means the new local service provider after service migration occurs.

(B) "Old local service provider" or "old LSP" means the old local service provider after service migration occurs.

(k) "Local service request" or "LSR" means the industry standard forms and supporting documentation for ordering local exchange services.

(l) "Network service provider" or "NSP" means the company whose network carries the dial tone, switched services and loop(s) to the customer. Based on the service configuration, a NSP can also be the LSP. In some cases the following more specific designations may be used:

(A) "Network service provider-switch" or "NSP-switch" means the provider that provides the dial tone and switched services.

(B) "Network service provider-loop" or "NSP-loop" means the provider of the local loop to the end user premises or other mutually agreed upon point.

(C) "New network service provider" or "new NSP" means the new network service provider after service migration occurs.

(D) "Old network service provider" or "old NSP" means the old network service provider after service migration occurs.

(m) "Requesting LSP" means the LSP whom a customer has authorized to view his/her customer service information. After migration occurs, the requesting LSP becomes the customer's new LSP.

(n) "Resale" means the sale of a local exchange telecommunications service by a CLEC to a customer by purchasing that service from another carrier.

(o) "Transition information" means network information (e.g., circuit ID), identity of the current network service providers (e.g., loop and switch providers), and identity of other providers of services (e.g., E-911 provider, directory service provider) associated with a customer's telecommunications service.

(p) "UNE" means unbundled network element. The following more specific designations may be used.

(A) "UNE-loop" or "UNE-L" means unbundled network element loop.

(B) "UNE-platform" or "UNE-P" means unbundled network element platform.

(4) An LSP may request CSR information for a specific customer from the customer's current LSP. Before requesting a CSR for a specific

customer, the requesting LSP must have on file one of the following verifiable forms of customer authorization:

(a) Letter of authorization from the customer to review his/her account;

(b) Third party verification of the customer's consent;

(c) Recording verifying consent from the customer to review his/her account; or

(d) Record of oral authorization given by the customer, which clearly gives the customer's consent to review his/her account.

(5) Every requesting LSP shall retain the customer authorization on file for one year from the date it received such authorization.

(6) A customer's current LSP may not require a copy of the end user's authorization from the requesting LSP prior to releasing the requested CSR. In the event the customer complains or other reasonable grounds exist, the current LSP may request verification of the customer's authorization from the requesting LSP. The parties must attempt to resolve any dispute concerning the validity of the customer's authorization prior to filing a formal complaint with the Commission.

(7) When requesting a CSR, a requesting LSP:

(a) Shall include, at a minimum, the following information:

(A) Customer's telephone number(s);

(B) An indication of customer consent to review the CSR;

(C) How to respond with the CSR information;

(D) The name of the requesting LSP, with contact name and telephone number, for questions about the request;

(E) Date and time the request was sent;

(F) Indication whether circuit ID is requested for UNE-L reuse; and

(G) Indication whether listing information is requested.

(b) May include the following information:

(A) Customer service address;

(B) Customer name;

(C) Tracking number for the request; or

(D) Other applicable information.

(8) Requesting LSPs may transmit CSR requests via facsimile, electronic mail, regular mail, or other agreed-upon means. All carriers must, at a minimum, allow for reception of CSR requests via facsimile.

(9) All carriers should reuse existing UNE-L facilities in lieu of ordering a new UNE-L. A UNE-L shall be considered reusable when the existing circuit or facilities are no longer needed by the old LSP to provide service to the migrating customer or any customer that is currently using those facilities. When requested and reuse of the UNE-L facility is available the current LSP must provide the circuit ID for the requested UNE-L facility to the requesting LSP as part of the CSR response or transition information. Authorization is not required from the old LSP for the new LSP to reuse portions of the network that were provided to the old LSP by a NSP(s), and the old LSP shall not prohibit such reuse. To order the reuse of a UNE-L facility, the new LSP shall furnish the circuit ID on the LSR issued to the existing or new NSP-L.

(10) When responding to a CSR request the current LSP shall provide, at a minimum, the following:

(a) Account level information, including the following:

(A) Billing telephone number and/or account number;

(B) Complete customer billing name and address;

(C) Directory listing information including address and listing type, when requested;

(D) Complete service address (including floor, suite, unit); and

(E) Requesting LSP's tracking number when provided on the CSR request.

(b) Line level information, including the following:

(A) Working telephone number(s);

(B) Current preferred interexchange carrier(s) (PIC) for interLATA and intraLATA toll, including PIC freeze status;

(C) Local freeze status;

(D) All vertical features (e.g., custom calling, hunting) identified in a manner that clearly designates the products and services to which the customer subscribes;

(E) Options (e.g., Lifeline, 900 blocking, toll blocking, remote call forwarding, off-premises extensions), if applicable;

(F) Service configuration information (e.g., resale, UNE-L, UNE-P);

(G) Identification of the NSPs and/or LSPs, when different from the LSP providing the response. This is considered transition information;

(H) Identification of data services or any other services on the customer's line utilizing that UNE-L (e.g., alarm services); and

(I) Circuit ID to be provided when requested and the UNE-L is not being used for other services. This is considered transition information.

(11) If requested, and not provided with the CSR response, the current LSP shall provide transition information, and identify the current provider(s) of various service components to the customer (e.g., loop,

ADMINISTRATIVE RULES

directory service) if different from the current LSP. Circuit ID should only be provided by the current LSP when the UNE-L is reusable.

(12) Current LSPs responding to CSR requests may transmit the CSR information by facsimile, electronic mail, electronic data interchange, or by other agreed-upon means. All carriers must, at a minimum, allow for transmission of responses to CSR requests by facsimile. Regular mail may be used if the response is 50 or more pages or if the CSR request was transmitted by regular mail.

(13) Upon the effective date of this rule, current LSPs shall respond to CSR requests within two business days of when the request was received. Six months after the effective date of this rule, current LSPs shall respond to CSR requests within one business day of when the request was received. If the current LSP cannot meet the response requirement for any legitimate reason, such as complex services, the current LSP shall notify the requesting LSP within 24 hours of when the request was received. The notification shall include a legitimate reason for the delay. The current LSP and the requesting LSP shall negotiate in good faith to establish a reasonable time for the current LSP to respond to the request.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.030

Hist.: PUC 3-2004, f. & cert. ef. 1-15-04

Adm. Order No.: PUC 4-2004

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04

Notice Publication Date: 11-1-03

Rules Amended: 860-038-0540

Subject: This rule defines the procedure to enable electric companies to transfer proprietary customer information to an Administrator (described in ORS 757.312(3)(b)(A) and (B)) following written notification to customers, pursuant to electric industry restructuring.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-038-0540

Consumer Information

(1) Subject to Commission approval, an electric company shall determine the proprietary consumer information that will be made available to its competitive operations, ESSs, affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, along with the prices, terms, conditions, and consent procedures associated with the transfer of such information to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.

(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted-out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:

(a) The necessary database format and information that will be transferred;

(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;

(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;

(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;

(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and contractor employee shall sign prior to having access to consumer information, including proprietary consumer information;

(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;

(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and

(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on

the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.

(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the Administrator shall promptly seek Commission resolution of the dispute. An electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.

(4) An electric company shall provide consumers whose demand is less than 1MW an opportunity to opt-out of the information transfer. An electric company shall notify the consumers of the opt-out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:

(a) Identify and explain the role of the Administrator;

(b) Identify the type of proprietary consumer information to be transferred by an electric company; and

(c) Describe the nature and use of the proprietary consumer information by the Administrator.

(5) An electric company shall notify in writing consumers whose demand is 1MW or greater (over 1MW consumer) to provide an opportunity to opt-in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric company shall comply with the requirement of section (4) of this rule. For consumers without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1MW consumer does not opt-in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt-in notification for the over 1MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(c) of this rule.

(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at-fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

Stat. Auth.: ORS 183, 756 & ORS 757

Stats. Implemented: ORS 756.040 & ORS 757.600-757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 13-2003(Temp), f. & cert. ef. 7-24-03 thru 1-20-04; PUC 4-2003, f. & cert. ef. 1-15-04

Real Estate Agency

Chapter 863

Adm. Order No.: REA 4-2003(Temp)

Filed with Sec. of State: 12-18-2003

Certified to be Effective: 1-1-04 thru 6-29-04

Notice Publication Date:

Rules Amended: 863-015-0015, 863-015-0080, 863-015-0200

Subject: The 2001 legislature enacted Senate Bill 446 revising Oregon's licensing system for real estate professionals including real estate brokers and real property managers. The Real Estate Agency

ADMINISTRATIVE RULES

adopted rules to implement various provisions of Senate Bill 446. These proposed temporary administrative rules are required to fix inconsistencies within the rules promulgated subsequent to the passage of Senate Bill 446, and are necessary to further implement the policies and procedures contemplated in the legislation.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-015-0015

Application; Background Check Application and Fingerprint Cards

(1) Applicants for real estate broker, principal real estate broker or real estate property manager licenses shall submit to a background check, except applicants who are currently licensed as a real estate broker, principal real estate broker or real estate property manager or who are eligible for renewal of such licenses. The background check application shall be made in writing on a form prescribed by the Commissioner with all information provided by the applicant and verified by the applicant.

(2) The background check application shall include, but is not limited to, the following information:

- (a) The name, residence address and telephone number for the applicant;
- (b) The date and place of birth of the applicant;
- (c) The Social Security Number of the applicant (for identification purposes only);
- (d) Whether the applicant has ever been convicted of or is under arrest, investigation or indictment for a felony or misdemeanor; and
- (e) Whether the applicant has ever been refused a real estate license or any other occupational or professional license in any other state or country, or whether any real estate license or other occupational or professional license held by the applicant has ever been revoked or suspended or the licensee fined or reprimanded; and

(f) Any other information considered necessary by the Commissioner to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant shall submit two completed fingerprint cards on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The background check application, fingerprint cards and processing fee shall be submitted to the Agency prior to issuance of a license.

(5) At the request of an applicant, agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during the Agency's posted hours at the Agency's office upon payment to the Agency of a \$10 fee.

(6) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The Commissioner shall keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(7) If the information developed by the Agency on an applicant indicates that additional information should be obtained from the applicant, it will be the duty of the applicant, upon notice and request by the Agency, to provide the requested information in order to complete the application. Failure to comply may result in a determination that the application is incomplete which will result in termination of the application.

(8) An applicant who has otherwise qualified for licensing, may not be considered for licensing as a real estate broker, principal real estate broker, or property manager until the background check process and review has been completed including but not limited to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

(9) An applicant for a license pursuant to OAR 863-015-0080 may be issued a license following submission of a background check application and fingerprints cards and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thur 6-29-04

863-015-0080

Nonresident License Recognition

(1) As used in ORS 696.265 and this rule, unless the context requires otherwise:

(a) "Nonresident real estate broker" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity and whose license authorizes that individual to employ, engage or otherwise supervise other real estate brokers or salespersons.

(b) "Nonresident real estate salesperson" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity.

(c) "Nonresident licensee" means either a nonresident real estate broker or a nonresident real estate salesperson.

(d) "State or country of residence" means, presumptively, the state or country where an individual's resident license is located.

(2) **Nonresident License Recognition.** An individual who is not a resident of Oregon, is actively engaged in professional real estate activity in his or her state or country of residence and has been duly licensed by that state or regulatory agency within that country, may be issued an Oregon nonresident license if:

(a) The state or country of residence of the applicant allows an Oregon real estate broker to be licensed in that state or country under terms and conditions similar to those prescribed in ORS 696.255, 696.265 and OAR; and

(b) The state or country of residence of the applicant is capable of assisting and does assist the Commissioner in the Commissioner's review of real estate transactions and management of rental real estate for enforcement to protect Oregon consumers affected by the professional real estate activity of nonresident licensees.

(3) An applicant for a nonresident license must provide fingerprints and criminal offender information in the same manner as required of a resident licensee under ORS 696.020(5)(b). The nonresident license application must be accompanied by a background check application, fingerprint cards and processing fees as prescribed by OAR 863-015-0015. The applicant must furnish with the nonresident license application proof that the applicant holds a current and valid license issued by the state or country of residence.

(4) An applicant for a license may be issued a license following submission of a background check application and fingerprints cards and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

(5) An applicant for a nonresident license must sign and file with the Real Estate Agency an affidavit stating that the applicant has reviewed and is familiar with the Oregon Real Estate License Law and the rules and regulations of the Agency and agrees to be bound by those laws, rules and regulations.

(6) For a nonresident real estate salesperson who is a resident of a state requiring salespersons to work under licensed real estate brokers, the license issued by the Real Estate Agency must contain the business name and business address of the broker under whose license the salesperson works. The license issued to such a nonresident real estate salesperson will be mailed to the broker at the broker's business address.

(7) A nonresident real estate licensee who deposits or maintains funds, whether in Oregon or in the state or country of residence, shall assure that trust funds are deposited and maintained in client trust accounts in accordance with ORS 696.241, 696.243, 696.245 and OAR 863-015-0260 and 863-015-0265.

(8) Upon request of the Real Estate Agency, nonresident licensees shall produce in the Agency's office any and all records of professional real estate activity conducted in Oregon. The nonresident licensee, by applying for and accepting the nonresident license, authorizes the Real Estate Agency to inspect and examine any transaction escrow records, trust account records, and other records of professional real estate activity, wherever maintained.

(9) With respect to nonresident real estate salespersons who are residents of a state or country requiring salespersons to work under licensed real estate brokers, all advertising (including business signs, business cards, agreements and other documents) used by those salespersons must contain the name and business address of the nonresident real estate broker.

(10) The Commissioner may suspend or revoke, reprimand, deny a license to or refuse to renew a license to a nonresident real estate licensee upon any of the grounds in ORS 696.301, or upon the ground that the state or country of residence has suspended, revoked, denied or refused to renew the person's license, or has limited the license in any way.

ADMINISTRATIVE RULES

(11) Except as otherwise provided herein, the application for nonresident licenses, fees prescribed by statute and rule, the terms of the licenses, the processing of the license application and renewal, the transfer of the licenses, and all other conditions and requirements of licensure shall be as provided for by the Oregon Real Estate License Law.

(12) **Reciprocity Agreements.** The Commissioner may enter into reciprocity agreements with other states or countries where necessary to permit Oregon real estate licensees to obtain licenses in such other states or countries.

(13) The Commissioner may include in such agreements the terms and conditions prescribed in OAR 863-015-0080, as the Commissioner finds necessary to promote the following:

(14) Nonresident licenses granted under reciprocity agreements shall remain in force, unless suspended or revoked by the Commissioner or for failure to pay the biennial renewal fees, only so long as the reciprocity agreement remains in effect between Oregon and the other state or country. In the event the non-resident licensee subsequently becomes a resident of Oregon, such person shall be able to obtain, upon filing of the proper application and other requisite documents together with the applicable fees, the equivalent resident license in Oregon. Application must be made within one year after becoming a resident.

Stat. Auth.: ORS 696.265, 696.385 & 183.335

Stats. Implemented: ORS 696.255 & 696.265

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04

863-015-0200

Agency Relationships

(1) Unless the parties expressly agree to a different relationship not otherwise prohibited by law, the types of agency relationships a real estate licensee may establish in a real estate transaction are limited to the following:

(a) An agency relationship between a real estate licensee and the seller exclusively;

(b) An agency relationship between a real estate licensee and the buyer exclusively;

(c) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represent both the seller and the buyer in the same real estate transaction;

(d) A disclosed limited agency relationship where real estate licensees associated with the same principal broker are designated to represent, respectively, the buyer exclusively and the seller exclusively;

(e) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represent more than one buyer in the same real estate transaction.

(2) Unless the parties expressly agree to a different relationship not otherwise prohibited by law:

(a) A licensee representing a seller by written agreement or course of conduct establishes an agency relationship under sections (1)(a) or (d) above;

(b) A licensee representing a buyer by written agreement or course of conduct establishes an agency relationship under sections (1)(b) or (d) above;

(c) A licensee representing both a buyer and a seller or two or more buyers in the same real estate transaction is a disclosed limited agent of both the buyer and seller or all buyers under sections (1)(c) or (e) above.

(3) When an agency relationship is formed between a real estate licensee and a client under section (2) above, the following apply:

(a) The principal broker with whom the licensee is associated is the agent of the client;

(b) In a real estate transaction in which different real estate licensees associated with the same principal broker establish agency relationships with different parties to the real estate transaction, the principal broker shall be the only disclosed limited agent of both parties.

(c) In a real estate transaction in which one or more real estate licensees associated with the same principal broker establish agency relationships with more than one party to the real estate transaction, those licensees and the principal broker shall be the only disclosed limited agents of those parties.

(4) Except as provided in sections (2) and (3) above, licensees affiliated with the same real estate business are not agents of all clients of the real estate business.

(5) Payment, or promise of payment, of a real estate commission or other fee does not by itself create an agency relationship.

(6) A principal real estate broker acting as a disclosed limited agent under section (3)(b) above, shall do each of the following:

(a) Supervise the licensees associated with the principal broker in fulfillment of their duties and obligations to their respective clients;

(b) Avoid advocating on behalf of either the seller or the buyer; and
(c) Avoid disclosing or utilizing, without permission, confidential information of any client with whom the principal broker has an agency relationship.

(7) Real estate licensees associated with a principal broker who is acting as a disclosed limited agent under section (3)(b) above, shall do both of the following:

(a) Serve as the agent of only the party or parties in the transaction with whom the real estate licensee has established an agency relationship; and

(b) Fulfill the duties owed to the respective client as set forth in the ORS 696.815 and as agreed in a disclosed limited agency agreement entered into pursuant to OAR 863-015-0210.

(8) All real estate licensees associated with a principal broker who are acting as disclosed limited agents under section (2)(c) above, shall refrain from disclosing or utilizing any confidential information relating to the other party that has been acquired as a result of the licensee's association with the principal broker, unless authorized to do so by that party.

(9) Nothing in this rule prohibits licensees from disclosing or utilizing factual, non-confidential information relating to all parties to a transaction in order to fulfill a licensee's duties to the client under ORS 696.815.

(10) If a principal real estate broker acting as a disclosed limited agent under section (3)(b) above, determines that confidential information of one principal to a transaction has become known to another client in the transaction as the result of a violation of sections (6)(c) or (7)(b) above, the principal broker shall promptly and fully disclose the violation to the affected client in writing.

(11) Affirmative duties under ORS 696.805 and 696.810, where appropriate, apply to the agents, principal, other principals and the principals' agents but do not create fiduciary, or other similar, duties inconsistent with the actual legal relationship between an agent and other principals to a transaction or that principals' agents.

(12)(a) The Final Agency Acknowledgement of the agency relationships described in this section and required by ORS 696.845 shall be printed in substantially the following form: [Form not included. See ED. NOTE.]

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

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04

.....

Adm. Order No.: REA 5-2003

Filed with Sec. of State: 12-24-2003

Certified to be Effective: 1-1-04

Notice Publication Date: 12-1-03

Rules Adopted: 863-050-0000, 863-050-0040

Rules Amended: 863-050-0015, 863-050-0020, 863-050-0025, 863-050-0050, 863-050-0055, 863-050-0060, 863-050-0065, 863-050-0100, 863-050-0115, 863-050-0150

Rules Repealed: 863-050-0108, 863-050-0110

Subject: In accordance with the Governor's directive to eliminate unnecessary regulation and to streamline the regulatory process, these proposed administrative rules eliminate redundant and unnecessary regulations. The Real Estate Commissioner consulted with committees consisting of persons representing escrow agents throughout the state to obtain public views that assisted the agency in drafting the proposed rules dealing with such issues as (including, but not limited to) reconciliation of interest-bearing accounts, electronic storage of documents and streamlining the provisions for audit and internal controls.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-050-0000

Definitions

As used in OAR chapter 863, division 50, unless the context requires otherwise:

(1) "Claim" means a request filed with the Agency in accordance with OAR 863-50-215 for recovery from:

(a) An escrow agent waived under ORS 696.527(4);

(b) The statutory deposit made by an escrow agent under ORS 696.527; or

(c) The corporate surety bond deposited with the Commissioner by the escrow agent under ORS 696.525.

(2) "Claimant" means a person who has filed a claim with the Agency.

ADMINISTRATIVE RULES

(3) "Closed Escrow." An escrow is closed when all property titles have been transferred and all monies and documents have been disbursed or distributed in accordance with the instructions of the Principals to the escrow transaction.

(4) "Escrow Activity" means any activity falling within the regulation and control of ORS 696.505 to 696.585.

(5) "Holdback" means a separate escrow, derived from a closing escrow, wherein funds are held after closing for the purpose of paying obligations related to the closing or to the financing of real or personal property therein after the closing has occurred.

(6) "Net worth," as used in ORS and OAR, is the remaining balance after subtracting total liabilities from total assets.

(7) "One sided escrow" as used in ORS 696.581(6), means an escrow that is opened by, or on behalf of, one party to a written, proposed agreement between two or more parties, for the purpose of depositing funds, property or documents into the escrow account prior to execution of the agreement by the other party(s).

(8) "Principal" means "principal" as defined in ORS 696.505(4) and

(a) In a collection escrow, means the seller or buyer, lender or borrower, vendor or vendee.

(b) In a holdback escrow, means those parties directing the holdback.

(c) In a one sided escrow, means the depositing party

(9) "Recoverable damages" means compensation for all actual damage suffered by the claimant. Recoverable damages do not include the following: attorney's fees and costs, punitive damages or after judgment interest. This list is by way of description and not of limitation.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)

Stats. Implemented: ORS 105.475 & ORS 696.581

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0015

Documents or Property Held in Escrow

Except as otherwise provided in ORS 696.581(5) and (6), an escrow agent shall use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to order of a court of competent jurisdiction.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)

Stats. Implemented: ORS 105.475 & 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 2-1981, f. 10-30-81, ef. 11-1-81; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 1-1993, f. 12-1-93, cert. ef. 1-1-94; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0020

Notice of Interest

(1) An escrow agent shall act without partiality to any of the principals to an escrow transaction.

(2) An escrow agent must disclose to the principals in an escrow transaction in a separate written notice any of the following interests, with respect to any real estate licensee, lender, mortgage or loan broker, builder or subdivider interested in the transaction: (a) A family relationship by blood or marriage with the escrow officer or such other staff member who may be assigned responsibility for the administration of the escrow agent's transaction file; and

(b) The nature of any pecuniary business interest in the transaction other than as escrow agent; and

(c) The nature of any financial interest in any principal in the transaction or in any real estate licensee, lender, mortgage or loan broker, developer, builder or subdivider interested in the transaction.

(d) If the escrow officer or such other staff member assigned responsibility for the administration of the escrow agent's file has an ownership interest in the escrow agent equaling more than 10 percent of the total ownership interest in the escrow agent.

(3) The following statement must be included in a disclosure made under section (2) of this rule:

"We call this interest to your attention in order to be open and fair with you. In our opinion this interest will not prevent us from being a fair and impartial escrow agent in this transaction. Nevertheless, you may request that this transaction be closed by some other licensed escrow agent if you so desire."

(4) The statement described in section (3) of this rule and the interest must be disclosed to the principals when the escrow is accepted by the escrow agent and before any of the principals become liable for any costs or signs any written escrow instruction; or, if the interest is discovered later, promptly upon discovery of the interest.

(5) Each escrow agent making any disclosure required by section (2) of this rule shall take a written receipt for the disclosure statement or shall document the disclosure and its delivery to a principal. The escrow agent shall maintain the receipts and documentation as records under OAR 863-050-0115.

(6) The disclosure required by section (2) of this rule shall be given if the escrow agent, its owners, officers, management staff in the office of the escrow agent handling the escrow transaction, or the escrow officer handling the escrow transaction knows of any relationship described in section (2) of this rule. The Commissioner may impute to the escrow agent any knowledge of the individual having an interest described in section (2) of this rule, if the Commissioner finds that the escrow agent did not have an implemented internal policy requiring disclosure of any such interest by its owners, officers and employees described in section (2) of this rule in order to comply with this rule; or that the escrow agent was, in practice, attempting to evade the disclosure requirements of this rule to the potential detriment of a principal in the escrow transaction.

(7) As used in this rule, "owner" means a person having an ownership interest in the escrow agent equaling more than ten percent of the total ownership interest in the escrow agent.

(8) For the purposes of subsections (2)(b) and (c) of this rule, if an escrow agent gives any services, property or anything of value as a marketing tool to induce the recipient to bring or refer escrow business to the escrow agent, such giving shall not be considered a pecuniary business interest or financial interest for which disclosure must be made under this rule.

(9) The receipt by an escrow agent of bank services described in OAR 863-050-0065(2) and interest earned on clients trust funds under ORS 696.578(2) are not subject to the disclosure requirements of section (2) of this rule.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)

Stats. Implemented: ORS 696.535(1)(e) & 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0025

Closing Statement

(1) Upon completion of an escrow transaction, the escrow agent shall deliver a written, verified statement of the applicable escrow account to each principal to the escrow. The statement shall specify all receipts and disbursements of escrow funds for the principal. Charges to persons in connection with an escrow transaction shall be clearly designated and shall be shown separately from other disbursements of the escrow agent. Payments outside of escrow, if shown in the statement, shall be designated as payments outside of escrow and shall be set forth separately from payments by or to the escrow agent. The escrow agent shall retain a copy of the escrow statement in the escrow account file. The escrow agent shall date and sign the escrow statement and provide a copy of the statement of the represented principal(s), upon request, to any real estate broker representing such principal(s) involved in the transaction and any additional copy to a principal or the principal's designee.

(2) Upon request of a seller who has financed some or all of the sales price, the escrow agent shall furnish the seller with a copy of the buyer/borrower statement.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.535(1)(g) & 696.535(3)

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0040

Release of Earnest Money

(1) For the purpose of complying with subsection (7) of ORS 105.475, an escrow agent shall return all deposits and other consideration of a buyer held by the escrow agent without the need for separate written instructions from the seller if:

(a) The buyer in writing asserts that the buyer is revoking the buyer's outstanding offer pursuant to ORS 105.475, and demands return of all deposits and other consideration of the buyer held by the escrow agent; and

(b) The escrow does not contain a waiver of the right of revocation from any one buyer or a copy of such a waiver executed by any one buyer; and

(c) The buyer has not provided the escrow agent with executed written instructions and executed documents necessary to close the transaction; and

(d) The escrow does not contain a copy of an acknowledgment by any one buyer that the right to revoke has expired; and

(e) The buyer has provided the escrow agent with a written release and indemnification against all liability arising from the return of all deposits and other consideration held by the escrow agent.

(2) If the buyer has provided the escrow agent with an executed waiver of the buyer's right to revoke the offer or if the buyer has provided the escrow agent with executed written instructions and executed documents necessary to close the transaction, the escrow agent shall not disburse funds

ADMINISTRATIVE RULES

in the escrow without the separate written instructions of the buyer and seller in the escrow. For the purpose of complying with subsection (7) of ORS 105.475, an escrow agent receiving a revocation of offer from a buyer shall not be responsible for determining whether the revocation has been timely delivered to the seller.

(3) As used in this rule:

(a) "Buyer" means and includes all persons who are principals purchasing in the escrow in which the deposits and other consideration are held;

(b) "Any one buyer" means any one of the persons who are the principals purchasing in the escrow in which the deposits and other considerations are held.

(4) For the purpose of complying with subsection (7) of ORS 105.475, an escrow agent shall be subject to the collected funds requirements of OAR 863-50-055(1) and (11).

(5) If the escrow agent holding funds described in OAR 863-50-015 has reasonable cause to believe that a buyer is not entitled to return of the funds held in the escrow, the escrow agent may comply with subsections (7) and (8) of ORS 105.475 by interpleader of the deposits and considerations delivered to it.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.535(1)(g) & 696.535(3)

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0050

Accounting Controls; Record Inspection

(1) An escrow agent shall establish and maintain the following books on the agent's escrow business:

(a) Individual ledgers. Individual ledgers shall be identified by the escrow number and the names of the principals, to record the accounting for each escrow. Entries shall record each receipt and disbursement of escrow funds and shall be posted in date order on, or as of, the date they occur. Entries shall show the amount of the entry, the date of the entry, the receipt number, the check number or wire identification number and shall identify from or to whom funds were received or disbursed. Each ledger shall show and record a running balance of funds held in the individual escrow, on a daily basis, as entries occur. If an escrow agent uses more than one escrow trust bank account, each ledger shall identify the account in which its escrow funds are deposited.

(b) Receipts and disbursements journal, or checkbook register. A journal or register shall be established for each escrow trust bank account and shall record all receipts and disbursements of escrow funds. Entries shall be posted in date order and record a running book balance for total escrow liability of the agent in each trust bank account, on a daily basis. If entries are posted in batch totals, back-up documentation adequate to identify the individual items in the batch and verify the total shall be maintained.

(2) An escrow agent shall reconcile each escrow trust bank account at least once each month. The reconciliation shall be maintained as follows:

(a) The reconciliation shall have three components:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the receipts and disbursements journal or check book register as of the bank statement cut-off date; and

(C) The sum of all the balances of the individual escrow ledgers as of the bank statement cut-off date.

(b) The balances of each component of the reconciliation shall be equal to and reconciled with each other. If any adjustment is needed, the adjustment shall be clearly identified and explained;

(c) The agent or an authorized officer in direct control of escrow operations of the agent shall verify, sign and date the reconciliation, upon completion;

(d) Outstanding checks shall be listed by check number, issue date, payee and amount.

(e) The reconciliation worksheet, bank statement and all supporting documentation including, but not limited to, copies of the receipts and disbursements journal, or check book register, and a listing of each individual escrow ledger with a balance as of the reconciliation date, shall be preserved and filed by the agent in logical sequence. Where these records are computerized, they are to be printed out for filing with the reconciliation; and

(f) All reconciling items must be identified and cleared promptly.

(3) This rule shall also apply to interest bearing escrow trust accounts established pursuant to OAR 863-50-060, except that where monthly bank statements are not provided reconciliation may be quarterly.

(4) Record Inspection. The offices, places of business, books, records, accounts, safes, computer codes and keys, files, and papers of an escrow agent shall be maintained freely accessible and available for audit or examination by the Commissioner or the Commissioner's authorized representative.

(a) An escrow agent using computer services of another firm shall file a continuing authorization with the Commissioner and the computer firm authorizing the Commissioner to examine or audit the escrow agent's records maintained at the computer firm's place of business.

(b) If an escrow agent uses a computerized system for the production and maintenance of records and accounts required in the escrow agent's licensed activity, the computerized system must:

(A) Be capable of printing out any document used in the required accounting and record keeping process that would otherwise be generated or maintained by hand, such as receipt and check registers, receipt and disbursement journals;

(B) Be capable of backing up its stored data. At least once each month, the escrow agent must back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section within the last month. The back up data shall be made available to the Commissioner or to the Commissioner's authorized representatives upon demand;

(C) The reconciliations and all required supporting data shall be printed out at the time of reconciliation. Such printed materials shall be filed and preserved as required records of the licensed escrow activity.

Stat. Auth.: ORS 181, 183, 293 & 696

Stats. Implemented: ORS 696.535(2), ORS 696.541(2) & ORS 696.578

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0055

Accounting Practices

(1) A check shall not be drawn, executed, or dated prior to the existence in the individual escrow account or a bank escrow account against which it is drawn, executed, or dated, of a sufficient credit balance to cover the check. An escrow agent shall not withdraw or transfer money from any individual escrow account or bank escrow account in excess of the amount to the credit of such account at the time of the payment or transfer.

(2) Escrow fees from a closing escrow shall not be withdrawn from the closing escrow account or escrow bank account until the escrow is in a position to be closed.

(3) Only funds received as part of an escrow transaction or as trustee of a trust deed under ORS 86.705 to 86.795 may be deposited in the "Escrow" or "Trust" account established under ORS 696.578.

(4) All funds deposited in a "Trust" or "Escrow" account established under ORS 696.578 shall be withdrawn, paid out, or transferred to other accounts as specified in the written escrow instructions of the principals to the escrow transaction directed to the escrow agent or pursuant to order of a court of competent jurisdiction.

(5) An escrow agent shall provide the Commissioner upon the Commissioner's request with a continuing authorization to certify the actual balance in any "Escrow" or "Trust" account of the escrow agent established under ORS 696.578. The authorization shall be filed in the depository in which the account is maintained and a copy of the authorization shall be filed with the Commissioner.

(6) Upon request by an authorized representative of the Commissioner, an escrow agent must demonstrate that a "sufficient credit balance" existed in an individual escrow closing account prior to any disbursement by producing documentation and financial records showing that:

(a) The client's trust funds deposited into a clients' trust account and credited to the individual account were collected and available for disbursement; and

(b) The disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other individual escrow closing account.

Stat. Auth.: ORS 696.385 & 696.541

Stats. Implemented: ORS 696.535(2) & 696.578

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 1-1988, f. 5-31-88, cert. ef. 7-1-88; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0060

Interest-Bearing Accounts

(1) An escrow agent may place client's trust funds in a federally insured interest-bearing bank account, designated a clients' trust account, in a bank within this state with the prior written approval of all principals to the escrow transaction. Such approval may be contained in any agreement whether or not addressed to the escrow agent. Except as otherwise provided in ORS 696.581(5) and (6), the written escrow instruction shall include the written approval of all principals to the escrow transaction and shall specify how the funds are to be handled, including but not limited to the names of the principals, the identification of the escrow transaction, to whose account the interest earnings will accrue, the disbursement of the

ADMINISTRATIVE RULES

interest, and any limitations that may be imposed on the withdrawal of clients' trust funds deposited in the interest-bearing account. Such written instructions may be provided after the deposit to the interest bearing account but before there is any disbursement of funds from the escrow account. As provided in ORS 696.578(2), the interest earnings of such interest-bearing account may inure to the benefit of the escrow agent if expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(2) An escrow agent shall deposit and maintain the clients' trust funds in a federally insured interest-bearing account denominated as a "Trust" or "Escrow" account under ORS 696.578.

(3) An escrow agent shall account separately for the deposit of funds and disposition of interest earned in each escrow transaction and handle disposition of interest earned as a disbursement in the closing of the escrow transaction.

(4) An escrow agent may maintain one or more separate federally insured interest-bearing accounts for each escrow transaction subject to this rule.

(5) As used in this rule, "bank" means a financial institution in this state having one or more types of federally insured interest-bearing accounts available to depositors, including but not limited to commercial banks, savings and loans, mutual savings banks and credit unions.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)
Stats. Implemented: ORS 696.578
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 7-1984, f. 9-4-84, ef. 10-1-84; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0065

Rebate, Discount, Refund, and Credit

(1) Except as provided in section (2) of this rule, an escrow agent shall account for and pass on to a principal any rebate, discount, or other benefit received directly or indirectly by the agent and resulting from disbursement of the principals escrow account or the agent's bank escrow or trust account.

(2) An escrow agent may retain bank services. As used in this rule, "bank services" are any monetary benefits received directly or indirectly from its bank as services to the escrow agent because the escrow agent deposits and maintains its clients' trust funds in non-interest bearing accounts in such bank. The escrow agent must disclose to the principals in a transaction the nature of the benefit being received. The disclosure shall contain a good faith estimate of the amount of the benefit received as it applies to the individual escrow. As provided in ORS 696.578(3), any bank services provided to the escrow agent shall not be considered to affect the impartiality or neutrality of the escrow agent. Such services are permitted with approval in the written closing instructions of the principals.

(3) If an escrow agent receives a refund or return of moneys disbursed from an escrow, the escrow agent must account for and handle such moneys as any other funds deposited by or on behalf of a principal into the escrow. The escrow agent must adjust the ledger sheet for the escrow transaction to reflect the refund or return, disburse the refund or return in accordance with the dated written escrow instructions of the principal(s) and, as appropriate under such instructions, provide an explanation of the refund or return to the appropriate principal(s) to the escrow.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)
Stats. Implemented: ORS 696.578(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0100

Records

(1) In addition to and not in lieu of any other record-keeping requirements under OAR 863-050-0015 to 863-050-0150 and the Oregon Escrow Law, an escrow agent shall keep the following records to account for funds received and disbursed in escrow:

(a) Copies of all receipt forms used by the escrow agent including voided receipts;

(b) All cancelled checks of the escrow agent which shall be filed with all numbered check forms accounted for, including voided checks; and

(c) All vouchers and check stubs used by the escrow agent, including voided vouchers and check stubs;

(d) Copies of all transfer forms used in making transfers of funds between escrow accounts; and

(e) Escrow log. Each escrow shall be assigned an identifying number in a logical sequence approved by the Real Estate Commissioner and entered in an escrow log, in that order. Log entries shall show the date of opening, the escrow number and the name(s) of the principal(s); or

(f) Hard copy escrow ledger. At the time of closing or cancellation, each escrow ledger described in OAR 863-50-050(1) shall be printed out,

if computerized, and filed separately in a logical sequence approved by the Real Estate Commissioner.

(2) For lost or missing checks described in subsection (1)(b) of this rule, an escrow agent shall maintain a signed, dated statement explaining why the check is missing.

(3) Except as provided in sections (4) and (5) of this rule, no trust funds shall be received or disbursed without issuing a receipt or check to account for the receipt or disbursement. An appropriate receipt shall be issued as soon as practicable after receiving cash in a collection escrow or receiving cash or checks in a closing escrow.

(4) An annual written statement shall be sent by an escrow agent to a principal in a collection escrow to show all receipts in the collection escrow during the year covered in the report.

(5) No disbursement from an individual escrow account shall be made based upon a wire or electronic transfer deposited into the Trust or Escrow account of the escrow agent until the deposit has been verified by the escrow agent. The escrow agent shall make arrangements with the escrow depository and other entities for an immediate follow-up hard copy credit memo or a hard copy debit memo when funds are received or disbursed by wire or electronic transfer. Receipt of funds by wire or electronic transfer must be posted in the same manner as other receipts and include a traceable identifying name or number supplied by the escrow depository receiving the funds or by the transferring entity. The escrow agent disbursing funds by wire or electronic transfer shall retain in the individual escrow transaction file a copy of the written authorization from the principals to use wire or electronic transfer for disbursement or funds.

(6) Check forms used by an escrow agent shall be pre-numbered with consecutive numbers. If a computer fills in or generates checks and any check copies, all check stock and check copies must be consecutively pre-numbered. If a computer generates checks using un-numbered check stock, the computer must continually and consecutively number the checks as generated. The account number must appear in the magnetic coding on the bank check face to identify the account number for reading by the bank's computerized accounting system.

(7) Upon request for a copy of any check form, voided check or check copy by an authorized representative of the commissioner, the escrow agent receiving the request shall supply the requested check or copy.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)
Stats. Implemented: ORS 696.535(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0115

Records Retention

(1) An escrow agent shall retain for six years all bank statements of the agent's bank accounts and all records required by OAR 863-050-0005 to 863-050-0150 and the Oregon Escrow Law.

(2) In addition to and not in lieu of the requirements of ORS 192.825 to 192.855 (The Electronic Signature Act) the requirements of OAR 863-10-XXX through OAR 863-10-XXX shall apply to all records, including any items generated through E-mail or any other means which does not require the creation of a paper document.

(3) An escrow agent may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, client trust account trust records and other documents executed by him or her or obtained by him or her in connection with any escrow activity and transaction, provided the following requirements are satisfied:

(a) The electronic image storage shall be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

(b) The stored document or record is made or preserved as part of and in the regular course of business.

(c) The original record from which the stored document or record was copied was made or prepared by the escrow agent or escrow agent employees at or near the time of the act, condition or event reflected in the record.

(d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.

(e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(4) An escrow agent shall maintain at the escrow agent's office a means of viewing copies of documents or records stored pursuant to this section. An escrow agent shall provide, at the escrow agent's expense, a paper copy of any document or record requested by the Agency.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 696
Stats. Implemented: ORS 696.535(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

863-050-0150 Annual Report

(1) An escrow agent shall be subject to audit or examination, as the Commissioner deems necessary, by the Commissioner or the Commissioner's authorized representative. The Commissioner shall collect from an escrow agent the reasonable expenses of the audit or examination.

(2) An escrow agent shall submit an Annual Audit Report consisting of the following to the Commissioner not later than 120 days after the end of the agent's tax or accounting year:

(a) A set of financial statements of the agent, prepared in accordance with generally accepted accounting principals, by a certified public accountant or other qualified person approved by the Commissioner. The preparer of financial statements shall provide a statement as to the type of the presentation made and include all appropriate footnotes. These financial statements shall include a balance sheet as of the agent's year end and statements of profit and loss, cash flows, retained earnings and any other changes in capital accounts, for the year then ended; and

(b) A schedule of the amount of trust funds received and disbursed each month on collection escrows and the amount of trust funds received and disbursed each month on closing escrows. The schedule shall include the beginning balance and the ending balance of each such account and be prepared based upon the individual escrow ledger sheets for such accounts; and

(c) A list of closing escrows which have been open for more than twelve (12) months at the end of the audit period, showing the escrow account number, date opened, name of principals, amount of escrow liability and a statement of the reason for the account remaining open for more than one year; and

(d) The amount of clients' trust funds received and disbursed each month by the escrow agent while acting as a trustee under a trust deed pursuant to ORS 86.705 to 86.795. The schedule shall include the beginning balance and the ending balance for each account. The schedule shall be prepared from the outstanding individual escrow ledger sheet for such accounts; and

(e) An executed general authorization to inspect all clients' trust accounts set up as required by ORS 696.578(1) on a form approved by the Commissioner; and

(f) Any other information the Commissioner may request from the escrow agent as necessary in administering the provisions of ORS 696.505 and 696.585.

(3) The Commissioner may require an escrow agent to submit to the Commissioner an independent audit by a certified public accountant or a public accountant, conducted at the escrow agent's expense. The Commissioner may specify the nature and scope of the independent audit. The submission by an escrow agent of a required independent audit to the Commissioner or the Commissioner's authorized representative does not preclude any subsequent audit within the same year.

(4) An extension of time may be granted by the Commissioner for the filing of reports submitted under sections (2) or (3) of this rule upon a written request by the agent showing sufficient cause why the reports cannot be filed by the specified date.

(5) As part of any report submitted under sections (2) or (3) of this rule, the escrow agent shall authorize the Commissioner or the Commissioner's authorized representative to examine and verify any asset or liability shown on the balance sheet. The authorization shall be in writing and shall be submitted to the Commissioner with the report. The report shall be signed by the owner or appropriate corporate officer of the escrow agent attesting to the accuracy of the information contained in the report.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)
Stats. Implemented: ORS 696.525 & ORS 696.535(1)(a)(i)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 34, f. 2-8-73, ef. 3-1-73; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

Adm. Order No.: REA 1-2004(Temp)

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04 thru 6-25-04

Notice Publication Date:

Rules Amended: 863-015-0055

Subject: The 2001 legislature enacted Senate Bill 446 revising Oregon's licensing system for real estate professionals including real estate brokers and real property managers. The Real Estate Agency

adopted rules to implement various provisions of Senate Bill 446. This proposed temporary administrative rule is required to fix inconsistencies within the rules promulgated subsequent to the passage of Senate Bill 446, and are necessary to further implement the policies and procedures contemplated in the legislation.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-015-0055

Licensing; Continuing Education

(1) Generally. To renew an active license, a licensee shall provide evidence of completion during the preceding two license years of at least 30 clock hours of real estate oriented continuing education.

(a) A licensee shall complete fifteen clock-hours of continuing education courses in at least one of the following required topics:

- (A) Trust Accounts;
- (B) Misrepresentation;
- (C) Anti-Trust;
- (D) Rule and Law Update;
- (E) Property Management;
- (F) Commercial Brokerage and Leasing;
- (G) Real Estate Taxation: Federal, State and Local;
- (H) Agency;
- (I) Fair Housing;
- (J) Contracts;
- (K) Evaluation of Property;
- (L) Brokerage Management; or
- (M) Land;
- (N) Business Ethics.

(b) A licensee shall complete the remaining fifteen hours in any of the above required course topics or in other elective real estate oriented continuing education courses.

(c) Courses related to personal skills such as time management, and routine meetings and luncheons shall not be considered real estate oriented continuing education courses.

(d) Courses shall be a minimum of one clock hour in length. A clock-hour is measured in sixty-minute increments, exclusive of meal breaks or rest breaks.

(e) Credit shall not be given for repeating a continuing education course with the same content during a two-year renewal period.

(2) Certification Generally. "Certifying licensee" means a principal real estate broker or real estate property manager who certifies on the Agency's license renewal form that a licensee completed the continuing education requirements. "Evidence of completion" as used in ORS 696.174(4) and this rule means the certification on the Agency license renewal form, supplemented by a standard Certificate of Attendance developed by the Real Estate Agency for each course completed by a licensee.

(a) In completing the standard Certificate of Attendance, the certifying licensee shall decide:

(A) Whether a continuing education course meets the continuing education requirements; and

(B) What category in which to classify the course: required topic or elective topic.

(b) A certifying licensee may approve continuing education courses completed outside of Oregon. The number of approved credit hours shall reflect the clock hours of course content related to the practice of real estate in Oregon. Credit hours shall not be approved for courses with content specific to another state or jurisdiction.

(c) The certifying licensee shall retain the Certificate of Attendance in their records as prescribed in OAR 863-015-0260. The certifying licensee shall produce a copy of the Certificate of Attendance upon request by the associated licensee or upon request of the Agency.

(d) Principal real estate brokers, real estate property managers and sole practitioner real estate brokers who are sole practitioners shall self-certify completion of their continuing education requirements, shall retain their Certificate of Attendance as prescribed in OAR 863-015-0260 and shall produce a copy of the Certificate of Attendance upon request of the Agency.

(e) Filing a false Agency license renewal form or Certificate of Attendance shall be prima facie evidence of a violation of ORS 696.301(1), (6), (12), (25), (27), (28) and (31).

(3) Certification Criteria. In certifying a continuing education course, the certifying licensee shall consider the totality of the information provided and the content of the class, and may consider additional criteria including, but not limited to:

- (a) Evidence of instructor qualifications to teach the course;

ADMINISTRATIVE RULES

(b) A review of the course content to assure it is current and accurate, the learning objectives for the course, and whether the course content fulfills the learning objectives;

(c) Whether means of measuring learning outcome, such as a final examination, are included; and

(d) Whether students have a means of evaluating the course and instructor.

(4) Advanced Real Estate Practices. A real estate broker first licensed after July 1, 2002 shall complete a Commissioner-approved course entitled "Advanced Real Estate Practices" prior to the first active renewal of the real estate broker's license or prior to the first license reactivation following an inactive first renewal. A certifying licensee may accept Advanced Real Estate Practices as satisfying the continuing education requirements for a licensee's renewal. The Advanced Real Estate Practices course requirement does not apply to principal brokers, sole practitioner real estate brokers or property managers.

(5) Alternative Delivery. "Alternative delivery" means presentation of continuing education material in a method other than classroom lecture, including but not limited to correspondence, and electronic means such as satellite broadcast, videotape, computer disc, and Internet.

(a) Certifying licensees may approve continuing education courses completed through alternative delivery methods.

(b) In addition to the certification criteria in section (3), in determining whether to certify an alternative delivery method course, the certifying licensee may consider:

(A) Whether the course offers operational or electronic security measures;

(B) The ability of the student to interact with an instructor or access other resources to support their learning;

(C) Whether the learning environment and technical requirements are explained to students in advance of the course; and

(D) Whether the course includes a proctored final examination.

(c) In determining the number of credit hours to approve for an alternative delivery course, the certifying licensee may consider:

(A) The number of questions in the examination, with a minimum standard of 10 questions per hour of credit;

(B) The number of pages for Internet, Computer-Based Training, CD-ROM and book courses, with a minimum standard of 10 pages per hour of credit; and

(C) The clock hours elapsed for videocassette, audiotape or teleconference courses.

(6) Course Sponsors. Sponsors of continuing education courses may:

(a) State in their advertising that continuing education requirements; e.g., course content, topics and hours, shall be approved by the licensee's principal broker; and

(b) Complete the following information on a Certificate of Attendance:

(A) Real estate licensee's name;

(B) Continuing education course title and date of completion;

(C) Instructor's name and location of course; and

(D) Method of course delivery and whether a final examination was administered.

Stat. Auth. 696.385 & ORS 183.335

Stats. Implemented: ORS 696.174 & ORS 696.301

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04

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

Filed with Sec. of State: 1-15-2004

Certified to be Effective: 1-15-04 thru 6-25-04

Notice Publication Date:

Rules Adopted: 863-050-0035

Subject: The 2003 legislature enacted Senate Bill 207 revising Oregon's Escrow laws. These proposed temporary administrative rules are required to fix inconsistencies within the rules promulgated subsequent to the passage of Senate Bill 207 and are necessary to further implement the policies and procedures contemplated by the legislation.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-050-0035

Letters of Credit

(1) As used in this rule, unless the context requires otherwise:

(a) "Applicant" means the licensee who applies for and causes the bank or trust company to issue the letter of credit.

(b) "Financial institution" means any Oregon chartered commercial bank or nationally chartered commercial bank doing business in the State of Oregon.

(c) "Beneficiary" means the State of Oregon Real Estate Agency.

(d) "Clean and unconditional" means a letter of credit or confirmation which makes no reference to any other conditional agreement, document or entity.

(2) For the purposes of complying with ORS 696.527(4)(b), and for a certified, annually renewable letter of credit to be satisfactory to the commissioner, it must:

(a) Be issued by a financial institution doing business in the state of Oregon;

(b) Name the State of Oregon Real Estate Agency as Beneficiary;

(c) Be clean and unconditional;

(d) Be automatically extended, without amendment, for successive one-year periods from the stated expiration or any future expiration date until such time as notice is given in accordance with subsection (2)(d);

(e) Provide for no less than sixty (60) days notice to the Beneficiary of any election not to renew the letter of credit; and

(f) Be payable by sight draft or upon presentation at an office of the bank by an authorized representative of the Beneficiary accompanied by a signed statement certifying that "The attached order from the Commissioner of the Oregon Real Estate Agency represents that the applicant is in violation of ORS 696.505–696.590."

Stat. Auth.: ORS 696.385, 183.385, 696.578, 696.541

Stats. Implemented: ORS 696.527

Hist.: REA 2-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04

**Secretary of State,
Elections Division**

Chapter 165

Adm. Order No.: ELECT 25-2003

Filed with Sec. of State: 12-31-2003

Certified to be Effective: 12-31-03

Notice Publication Date: 12-1-03

Rules Adopted: 165-001-0090

Subject: During the 2003 Legislative Session Chapter 64, 2003 Oregon Laws was adopted requiring the Secretary of State to establish by rule an administrative complaint procedure that meets the requirements of Title III of the Help America Vote Act 2002. This rule adopts the procedures and form for filing a complaint alleging a violation of Title III of HAVA.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-001-0090

HAVA Complaint Procedures

(1) The purpose of this rule is to adopt procedures for the receipt and disposition of complaints filed with the Secretary of State, Elections Division alleging violations of Title III of the Help America Vote Act of 2002 (HAVA). The rule is intended to fully comply with all federal requirements for the complaint procedure, as described in Section 402 of HAVA (P.L. 107-252).

(2) The procedures described in this rule are to be used solely for complaints filed alleging a violation of Title III of HAVA. Title III includes voting system standards, accessibility of voting systems to persons with disabilities, instructions on correcting voting errors, identification requirements for voting in federal elections if registration was by mail, computerized voter registration, contents of registration forms and provisional voting.

(3) State and county elections officials are encouraged to resolve HAVA complaints informally if possible. If informal resolution is not possible, and a person wishes to file a formal HAVA complaint under this procedure, the person shall use the HAVA complaint form (SEL 820). The complaint will be accepted and processed only if made in writing, signed under oath by the person filing the complaint, and notarized. The complaint form must be filed directly with the Secretary of State, Elections Division. If the complaint is submitted to a county elections office, the county elections official shall promptly forward the original complaint to the Elections Division. The complaint shall be considered filed on the day it is received at the office of the Elections Division.

(4) Upon receipt of a complaint, the Elections Division staff will review the complaint to determine if it alleges a violation of Title III of HAVA. If the complaint does not allege a violation of Title III, the complaint will be dismissed, with a letter provided to the complainant explaining the reason for the dismissal. If the complaint alleges a violation of Title III, the complaint will be acknowledged in writing, and the complainant will be offered the opportunity to request a hearing on the record. A hear-

ADMINISTRATIVE RULES

ing on the record may be provided by telephone or in person. The Elections Division staff will then request information from other persons who may have information related to the substance of the complaint. When the responses are received, copies will be sent to the complainant to provide an opportunity for the complainant to respond or rebut the information provided. Unless the complainant requested a hearing on the record, or the Elections Division chooses to provide such a hearing because of the nature of the allegations and responses, the Division will prepare a determination letter based on the information provided. The determination letter will address whether any violation of Title III has occurred and address how to resolve the problem to avoid its occurrence in the future.

(5) If a hearing on the record is scheduled, the Division will decide whether the hearing is to be conducted by telephone or in-person. The complainant and other persons who have relevant information to provide will be invited to participate. The hearing will be conducted before an Elections Division employee. The purpose of the hearing is to determine whether any procedure required by Title III was not correctly followed, and to develop a plan to make sure the violation, if any, does not happen again. The hearing is to be conducted as a fact-finding, problem solving forum. A record must be kept, including copies of any documents submitted and minutes, a tape or other record of the hearing.

(6) Whether the complaint is resolved through the procedures of subsections (4) or (5) of this rule, the final determination will be prepared by the Elections Division. If the outcome of the proceeding requires the provision of a remedy, the remedy must conform to state elections law and will not include financial payments to complainants or civil penalties against other involved individuals. Remedies may include written findings that a violation of Title III has occurred, strategies for insuring that that violation does not occur again, and, if it appears that the complaint involves a systemic problem, possible actions by the Elections Division to provide better instructions, training or procedures to all election officials to avoid future violations.

(7) Final determination letters will be signed by the Secretary of State or Deputy Secretary of State. All determination letters will be posted on the Division's website. A copy of the final determination will be provided to the complainant and to any other persons who provided information or participated in a hearing.

(8) The Division will handle all complaints filed under this rule in a way that allows a final determination to be issued within 90 days of the receipt of the complaint. If delays appear to put the 90 day deadline at risk, the Division may ask the complainant to provide an extension to complete the investigation or to conduct the hearing. If the complainant does not agree to provide an extension, the final determination must either be issued within the 90 days, or the matter must be referred to the dispute resolution process described in subsection (9).

(9) The Division will provide an alternative dispute resolution process for complaints that are not resolved within 90 days of the filing of the complaint (unless an extension is granted by the complainant) or for complaints that the Division, in its sole discretion, determine warrant this level of review. The alternative dispute resolution process is intended to be a consensus or cooperative outcome procedure, not an arbitration or mediation process model with adversaries or parties. The Division will select a person from a panel of volunteers who agree to provide their services to convene a meeting of the interested parties to resolve a particular complaint or complaints. The panel member will then recommend an outcome to the Secretary, to be adopted within 60 days of the referral. The Secretary will adopt the recommendation, or a revised version of the recommendation, as appropriate. Final determinations reached following this alternative dispute resolution process shall be publicized and distributed in the manner described in subsection (7) of this rule.

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

Stat. Auth.: ORS 246.150, Ch. 64, 2003 OL: Other Auth Title III, Help America Vote Act of 2002 (HAVA)(P.L. 107-252)

Stats. Implemented: Ch. 64, 2003 OL

Hist.: ELECT 25-2003, f. & cert. ef. 12-31-03

Adm. Order No.: ELECT 26-2003
Filed with Sec. of State: 12-31-2003
Certified to be Effective: 12-31-03
Notice Publication Date: 12-1-03
Rules Amended: 165-007-0030

Subject: This rule amendment deletes a reference to the Vote-by-Mail Manual as a directive because it is now an administrative rule. No amendments to the manual itself are proposed.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0030

Designating the Vote By Mail and Election Board Manuals

(1) The Secretary of State designates the *Vote By Mail Manual* and associated forms, as the procedures for conducting all vote by mail elections. All vote by mail elections shall be conducted following the requirements of ORS Chapter 254 and the *Vote By Mail Manual*.

(2) The Secretary of State designates the 1998 Election Board Manual and associated forms as the procedures and forms to be used for all elections conducted at a polling place. All polling place elections shall be conducted following the requirements ORS Chapter 254 and the *1998 Election Board Manual*.

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

Stat. Auth.: ORS 246.150, ORS 254.465, ORS 254.470

Stats. Implemented: ORS 247, ORS 254

Hist.: ELECT 5-1989, f. & cert. ef. 8-16-89; ELECT 9-2003, f. & cert. ef. 9-3-03; ELECT 26-2003, f. & cert. ef. 12-31-03

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
101-001-0020	12-4-03	Adopt	1-1-04	123-006-0015	12-23-03	Amend(T)	2-1-04
101-005-0010	12-4-03	Adopt	1-1-04	123-006-0041	12-23-03	Adopt(T)	2-1-04
101-005-0020	12-4-03	Adopt	1-1-04	123-006-0051	12-23-03	Adopt(T)	2-1-04
101-005-0030	12-4-03	Adopt	1-1-04	123-068-0015	12-15-03	Adopt(T)	1-1-04
101-005-0040	12-4-03	Adopt	1-1-04	123-068-0105	12-15-03	Adopt(T)	1-1-04
101-005-0050	12-4-03	Adopt	1-1-04	123-068-0205	12-15-03	Adopt(T)	1-1-04
101-005-0060	12-4-03	Adopt	1-1-04	123-068-0305	12-15-03	Adopt(T)	1-1-04
101-005-0070	12-4-03	Adopt	1-1-04	137-001-0070	12-9-03	Amend	1-1-04
101-005-0080	12-4-03	Adopt	1-1-04	137-001-0085	12-9-03	Repeal	1-1-04
101-005-0090	12-4-03	Adopt	1-1-04	137-003-0000	1-1-04	Amend	1-1-04
101-005-0100	12-4-03	Adopt	1-1-04	137-003-0501	1-1-04	Amend	1-1-04
101-005-0110	12-4-03	Adopt	1-1-04	137-003-0510	1-1-04	Amend	1-1-04
101-005-0120	12-4-03	Adopt	1-1-04	137-003-0515	1-1-04	Amend	1-1-04
101-005-0130	12-4-03	Adopt	1-1-04	137-003-0520	1-1-04	Amend	1-1-04
101-005-0140	12-4-03	Adopt	1-1-04	137-003-0525	1-1-04	Amend	1-1-04
101-006-0010	12-4-03	Adopt	1-1-04	137-003-0528	1-1-04	Amend	1-1-04
101-006-0020	12-4-03	Adopt	1-1-04	137-003-0530	1-1-04	Amend	1-1-04
101-010-0005	12-4-03	Amend	1-1-04	137-003-0535	1-1-04	Amend	1-1-04
101-020-0010	12-4-03	Amend	1-1-04	137-003-0540	1-1-04	Amend	1-1-04
101-020-0015	12-4-03	Amend	1-1-04	137-003-0545	1-1-04	Amend	1-1-04
101-020-0018	12-4-03	Amend	1-1-04	137-003-0555	1-1-04	Amend	1-1-04
101-020-0020	12-4-03	Amend	1-1-04	137-003-0560	1-1-04	Amend	1-1-04
101-020-0030	12-4-03	Amend	1-1-04	137-003-0565	1-1-04	Amend	1-1-04
101-020-0035	12-4-03	Amend	1-1-04	137-003-0570	1-1-04	Amend	1-1-04
101-020-0040	12-4-03	Amend	1-1-04	137-003-0572	1-1-04	Amend	1-1-04
101-030-0005	12-4-03	Amend	1-1-04	137-003-0573	1-1-04	Amend	1-1-04
101-030-0022	12-4-03	Adopt	1-1-04	137-003-0575	1-1-04	Amend	1-1-04
101-030-0040	12-4-03	Amend	1-1-04	137-003-0580	1-1-04	Amend	1-1-04
101-040-0005	12-4-03	Amend	1-1-04	137-003-0585	1-1-04	Amend	1-1-04
101-040-0010	12-4-03	Amend	1-1-04	137-003-0590	1-1-04	Amend	1-1-04
101-040-0025	12-4-03	Amend	1-1-04	137-003-0595	1-1-04	Amend	1-1-04
101-040-0030	12-4-03	Amend	1-1-04	137-003-0600	1-1-04	Amend	1-1-04
101-040-0035	12-4-03	Amend	1-1-04	137-003-0605	1-1-04	Amend	1-1-04
101-040-0040	12-4-03	Amend	1-1-04	137-003-0610	1-1-04	Amend	1-1-04
101-040-0045	12-4-03	Amend	1-1-04	137-003-0615	1-1-04	Amend	1-1-04
101-040-0050	12-4-03	Amend	1-1-04	137-003-0625	1-1-04	Amend	1-1-04
101-040-0060	12-4-03	Repeal	1-1-04	137-003-0630	1-1-04	Amend	1-1-04
101-040-0070	12-4-03	Repeal	1-1-04	137-003-0635	1-1-04	Amend	1-1-04
101-040-0080	12-4-03	Adopt	1-1-04	137-003-0640	1-1-04	Amend	1-1-04
101-050-0010	12-4-03	Amend	1-1-04	137-003-0645	1-1-04	Amend	1-1-04
101-050-0015	12-4-03	Amend	1-1-04	137-003-0650	1-1-04	Amend	1-1-04
101-050-0025	12-4-03	Amend	1-1-04	137-003-0655	1-1-04	Amend	1-1-04
105-040-0030	12-20-03	Amend(T)	2-1-04	137-003-0660	1-1-04	Amend	1-1-04
105-040-0050	11-25-03	Amend(T)	1-1-04	137-003-0665	1-1-04	Amend	1-1-04
121-040-0010	12-24-03	Amend	2-1-04	137-003-0670	1-1-04	Amend	1-1-04
122-040-0040	12-30-03	Adopt	2-1-04	137-003-0675	1-1-04	Amend	1-1-04
122-040-0050	12-30-03	Adopt	2-1-04	137-003-0690	1-1-04	Amend	1-1-04
122-040-0060	12-30-03	Adopt	2-1-04	137-003-0695	1-1-04	Amend	1-1-04
122-070-0000	12-4-03	Amend	1-1-04	137-004-0800	12-9-03	Amend	1-1-04
122-070-0010	12-4-03	Amend	1-1-04	137-008-0000	12-9-03	Amend	1-1-04
122-070-0030	12-4-03	Amend	1-1-04	137-008-0010	12-9-03	Amend	1-1-04
122-070-0060	12-4-03	Amend	1-1-04	137-008-0010	12-10-03	Amend(T)	1-1-04
122-070-0065	12-4-03	Adopt	1-1-04	137-040-0017	1-2-04	Amend	2-1-04
122-070-0070	12-4-03	Amend	1-1-04	137-040-0500	1-2-04	Amend	2-1-04
122-070-0080	12-4-03	Amend	1-1-04	137-040-0510	1-2-04	Amend	2-1-04
123-006-0005	12-23-03	Amend(T)	2-1-04	137-040-0520	1-2-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
137-040-0550	1-2-04	Amend	2-1-04	141-030-0038	1-1-04	Repeal	1-1-04
137-040-0560	1-2-04	Amend	2-1-04	141-030-0039	1-1-04	Am. & Ren.	1-1-04
137-040-0565	1-2-04	Adopt	2-1-04	141-030-0039	1-1-04	Amend	1-1-04
137-045-0010	12-9-03	Amend	1-1-04	141-030-0040	1-1-04	Repeal	1-1-04
137-045-0015	12-9-03	Amend	1-1-04	141-030-0045	1-1-04	Adopt	1-1-04
137-045-0030	12-9-03	Amend	1-1-04	141-035-0005	1-1-04	Amend	1-1-04
137-045-0035	12-9-03	Amend	1-1-04	141-035-0010	1-1-04	Repeal	1-1-04
137-045-0050	12-9-03	Amend	1-1-04	141-035-0011	1-1-04	Adopt	1-1-04
137-045-0055	12-9-03	Adopt	1-1-04	141-035-0012	1-1-04	Adopt	1-1-04
137-045-0060	12-9-03	Amend	1-1-04	141-035-0013	1-1-04	Amend	1-1-04
137-045-0070	12-9-03	Amend	1-1-04	141-035-0015	1-1-04	Amend	1-1-04
137-045-0080	12-9-03	Amend	1-1-04	141-035-0016	1-1-04	Adopt	1-1-04
137-045-0090	12-9-03	Amend	1-1-04	141-035-0018	1-1-04	Adopt	1-1-04
137-055-1020	1-5-04	Amend	2-1-04	141-035-0020	1-1-04	Amend	1-1-04
137-055-1160	1-5-04	Amend	2-1-04	141-035-0025	1-1-04	Amend	1-1-04
137-055-3200	1-5-04	Adopt	2-1-04	141-035-0030	1-1-04	Amend	1-1-04
137-055-3220	1-5-04	Amend	2-1-04	141-035-0035	1-1-04	Amend	1-1-04
137-055-3360	1-5-04	Amend	2-1-04	141-035-0040	1-1-04	Amend	1-1-04
137-055-3400	1-5-04	Amend	2-1-04	141-035-0045	1-1-04	Amend	1-1-04
137-055-3420	1-5-04	Amend	2-1-04	141-035-0047	1-1-04	Amend	1-1-04
137-055-3440	1-5-04	Amend	2-1-04	141-035-0048	1-1-04	Amend	1-1-04
137-055-3490	1-5-04	Amend	2-1-04	141-035-0050	1-1-04	Amend	1-1-04
137-055-3660	1-5-04	Adopt	2-1-04	141-035-0055	1-1-04	Amend	1-1-04
137-055-4060	1-5-04	Amend	2-1-04	141-035-0060	1-1-04	Amend	1-1-04
137-055-4080	1-5-04	Amend	2-1-04	141-035-0065	1-1-04	Amend	1-1-04
137-055-4100	1-5-04	Amend	2-1-04	141-035-0068	1-1-04	Adopt	1-1-04
137-055-4110	1-5-04	Adopt	2-1-04	141-035-0070	1-1-04	Amend	1-1-04
137-055-4120	1-5-04	Amend	2-1-04	141-035-0075	1-1-04	Adopt	1-1-04
137-055-4130	1-5-04	Amend	2-1-04	141-040-0005	1-1-04	Amend	1-1-04
137-055-4140	1-5-04	Repeal	2-1-04	141-040-0010	1-1-04	Amend	1-1-04
137-055-4160	1-5-04	Amend	2-1-04	141-040-0020	1-1-04	Amend	1-1-04
137-055-4180	1-5-04	Amend	2-1-04	141-040-0030	1-1-04	Amend	1-1-04
137-055-4200	1-5-04	Repeal	2-1-04	141-040-0035	1-1-04	Amend	1-1-04
137-055-4220	1-5-04	Repeal	2-1-04	141-040-0040	1-1-04	Amend	1-1-04
137-055-4240	1-5-04	Repeal	2-1-04	141-040-0200	1-1-04	Amend	1-1-04
137-055-4260	1-5-04	Repeal	2-1-04	141-040-0211	1-1-04	Amend	1-1-04
137-055-4280	1-5-04	Repeal	2-1-04	141-040-0212	1-1-04	Amend	1-1-04
137-055-4440	1-5-04	Amend	2-1-04	141-040-0214	1-1-04	Amend	1-1-04
137-055-4450	1-5-04	Adopt	2-1-04	141-040-0220	1-1-04	Amend	1-1-04
137-055-4520	1-5-04	Amend	2-1-04	141-045-0005	1-1-04	Amend	1-1-04
137-055-5020	1-5-04	Amend	2-1-04	141-045-0010	1-1-04	Amend	1-1-04
137-055-5025	1-5-04	Adopt	2-1-04	141-045-0015	1-1-04	Amend	1-1-04
137-055-5040	1-5-04	Amend	2-1-04	141-045-0021	1-1-04	Amend	1-1-04
137-055-5110	1-5-04	Amend	2-1-04	141-045-0031	1-1-04	Amend	1-1-04
137-055-5220	1-5-04	Amend	2-1-04	141-045-0041	1-1-04	Amend	1-1-04
137-055-5510	1-5-04	Adopt	2-1-04	141-045-0061	1-1-04	Amend	1-1-04
137-055-6020	1-5-04	Amend	2-1-04	141-045-0100	1-1-04	Amend	1-1-04
137-055-6025	1-5-04	Amend	2-1-04	141-045-0105	1-1-04	Amend	1-1-04
137-055-6110	1-5-04	Amend	2-1-04	141-045-0115	1-1-04	Amend	1-1-04
141-030-0010	1-1-04	Amend	1-1-04	141-045-0120	1-1-04	Amend	1-1-04
141-030-0015	1-1-04	Amend	1-1-04	141-045-0121	1-1-04	Amend	1-1-04
141-030-0025	1-1-04	Amend	1-1-04	141-045-0122	1-1-04	Amend	1-1-04
141-030-0034	1-1-04	Amend	1-1-04	141-045-0123	1-1-04	Amend	1-1-04
141-030-0035	1-1-04	Amend	1-1-04	141-045-0124	1-1-04	Amend	1-1-04
141-030-0036	1-1-04	Amend	1-1-04	141-045-0125	1-1-04	Amend	1-1-04
141-030-0037	1-1-04	Amend	1-1-04	141-045-0126	1-1-04	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
141-045-0130	1-1-04	Amend	1-1-04	150-311.806-(A)	12-31-03	Amend	2-1-04
141-045-0150	1-1-04	Amend	1-1-04	150-312.040(1)(b)	12-31-03	Amend	2-1-04
141-045-0155	1-1-04	Amend	1-1-04	150-314.295	12-31-03	Adopt	2-1-04
141-045-0160	1-1-04	Amend	1-1-04	150-314.385(c)-(B)	12-31-03	Amend	2-1-04
141-045-0170	1-1-04	Amend	1-1-04	150-314.415(1)(b)	12-31-03	Am. & Ren.	2-1-04
141-045-0180	1-1-04	Amend	1-1-04	150-314.415(1)(c)	12-31-03	Am. & Ren.	2-1-04
141-045-0185	1-1-04	Amend	1-1-04	150-314.505-(A)	12-31-03	Amend	2-1-04
141-085-0010	11-26-03	Amend	1-1-04	150-314.610(1)-(A)	12-31-03	Amend	2-1-04
141-085-0027	11-26-03	Amend	1-1-04	150-314.610(1)-(B)	12-31-03	Amend	2-1-04
141-085-0028	11-26-03	Amend	1-1-04	150-314.610(1)-(C)	12-31-03	Amend	2-1-04
141-085-0029	11-26-03	Amend	1-1-04	150-314.615-(F)	12-31-03	Amend	2-1-04
141-085-0075	11-26-03	Amend	1-1-04	150-314.655(2)-(B)	12-31-03	Amend	2-1-04
141-085-0096	11-26-03	Amend	1-1-04	150-314.665(6)(c)	12-31-03	Adopt	2-1-04
141-085-0115	11-26-03	Amend	1-1-04	150-314.840	12-31-03	Amend	2-1-04
141-085-0121	11-26-03	Amend	1-1-04	150-315.113	12-31-03	Adopt	2-1-04
141-085-0126	11-26-03	Amend	1-1-04	150-315.262	12-31-03	Amend	2-1-04
141-085-0131	11-26-03	Amend	1-1-04	150-316.054	12-31-03	Amend	2-1-04
141-085-0141	11-26-03	Amend	1-1-04	150-316.127-(D)	12-31-03	Amend	2-1-04
141-085-0146	11-26-03	Amend	1-1-04	150-321.005	12-31-03	Amend	2-1-04
141-085-0151	11-26-03	Amend	1-1-04	150-321.045	12-31-03	Amend	2-1-04
141-085-0156	11-26-03	Amend	1-1-04	150-321.282(1)-(C)	12-31-03	Repeal	2-1-04
141-085-0161	11-26-03	Amend	1-1-04	150-321.282(1)-(D)	12-31-03	Repeal	2-1-04
141-085-0176	11-26-03	Amend	1-1-04	150-321.282(1)-(E)	12-31-03	Repeal	2-1-04
141-085-0263	11-26-03	Amend	1-1-04	150-321.282(1)-(I)	12-31-03	Repeal	2-1-04
141-085-0410	11-26-03	Amend	1-1-04	150-321.282(2)(a)	12-31-03	Repeal	2-1-04
141-085-0421	11-26-03	Amend	1-1-04	150-321.282(2)(c)	12-31-03	Repeal	2-1-04
141-085-0430	11-26-03	Amend	1-1-04	150-321.282(5)	12-31-03	Repeal	2-1-04
141-085-0450	11-26-03	Adopt	1-1-04	150-321.282(6)(a)-(A)	12-31-03	Am. & Ren.	2-1-04
141-089-0180	11-26-03	Amend	1-1-04	150-321.282(6)(a)-(D)	12-31-03	Am. & Ren.	2-1-04
141-090-0020	11-26-03	Amend	1-1-04	150-321.358(2)(b)	12-31-03	Am. & Ren.	2-1-04
141-090-0030	11-26-03	Amend	1-1-04	150-321.358(3)(b)	12-31-03	Am. & Ren.	2-1-04
150-294.175(2)-(A)	12-31-03	Adopt	2-1-04	150-321.358(4)	12-31-03	Am. & Ren.	2-1-04
150-294.175(2)-(B)	12-31-03	Adopt	2-1-04	150-321.379(1)-(A)	12-31-03	Repeal	2-1-04
150-294.187	12-31-03	Amend	2-1-04	150-321.379(1)-(B)	12-31-03	Repeal	2-1-04
150-294.211(26)	12-31-03	Renumber	2-1-04	150-321.379(2)-(A)	12-31-03	Repeal	2-1-04
150-294.435(1)-(C)	12-31-03	Adopt	2-1-04	150-321.379(2)-(C)	12-31-03	Repeal	2-1-04
150-305.220(1)	12-31-03	Amend	2-1-04	150-321.430(1)	12-31-03	Repeal	2-1-04
150-305.220(2)	12-31-03	Amend	2-1-04	150-321.430(3)-(A)	12-31-03	Repeal	2-1-04
150-306.115	12-31-03	Amend	2-1-04	150-321.430(3)-(B)	12-31-03	Repeal	2-1-04
150-308.156(5)-(B)	12-31-03	Amend	2-1-04	150-321.430(3)-(C)	12-31-03	Repeal	2-1-04
150-308.159	12-31-03	Adopt	2-1-04	150-321.430(3)-(D)	12-31-03	Repeal	2-1-04
150-308.219	12-31-03	Amend	2-1-04	150-321.432-(A)	12-31-03	Amend	2-1-04
150-308.250	12-31-03	Amend	2-1-04	150-321.434	12-31-03	Repeal	2-1-04
150-309.100(3)-(B)	12-31-03	Amend	2-1-04	150-321.434(1)	12-31-03	Repeal	2-1-04
150-309.100(3)-(C)	12-31-03	Amend	2-1-04	150-321.434(2)	12-31-03	Repeal	2-1-04
150-309.110(1)-(A)	12-31-03	Amend	2-1-04	150-321.515	12-31-03	Repeal	2-1-04
150-309.110(1)-(B)	12-31-03	Amend	2-1-04	150-321.815(2)(b)	12-31-03	Am. & Ren.	2-1-04
150-309.110(1)-(D)	12-31-03	Adopt	2-1-04	150-321.815(4)	12-31-03	Am. & Ren.	2-1-04
150-309.110(1)-(E)	12-31-03	Adopt	2-1-04	150-321.950	12-31-03	Repeal	2-1-04
150-309.115(1)-(C)	12-31-03	Adopt	2-1-04	150-570.560	12-31-03	Renumber	2-1-04
150-309.115(2)-(f)	12-31-03	Renumber	2-1-04	150-Ch. 1078 Sec. 2 & 35 1999 Session	12-31-03	Renumber	2-1-04
150-311.205(1)(b)	12-31-03	Renumber	2-1-04	150-Ch. 1078 Sec. 2 & 35 1999 Session	12-31-03	Renumber	2-1-04
150-311.205(1)(c)-(A)	12-31-03	Renumber	2-1-04	150-OL 2003 Ch. 454 Sec. 1(1)	12-31-03	Adopt	2-1-04
150-311.205(1)(c)-(C)	12-31-03	Am. & Ren.	2-1-04				
150-311.672(1)(a)	12-31-03	Amend	2-1-04				
150-311.708	12-31-03	Amend	2-1-04				

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
150-OL 2003	12-31-03	Adopt	2-1-04	177-045-0030	1-5-04	Amend(T)	2-1-04
Ch. 454 Sec. 1(12)				177-045-0040	1-5-04	Amend(T)	2-1-04
150-OL 2003	12-31-03	Adopt	2-1-04	177-045-0050	1-5-04	Adopt(T)	2-1-04
Ch. 454 Sec. 1(13)				177-045-0060	1-5-04	Adopt(T)	2-1-04
150-OL 2003	12-31-03	Adopt	2-1-04	177-045-0070	1-5-04	Adopt(T)	2-1-04
Ch. 454 Sec. 4(1)(c)				177-045-0080	1-5-04	Adopt(T)	2-1-04
150-OL 2003	12-31-03	Adopt	2-1-04	177-082-0100	12-19-03	Repeal	2-1-04
Ch. 454 Sec. 4(3)				177-091-0000	12-19-03	Adopt	2-1-04
150-OL 2003	12-31-03	Adopt	2-1-04	177-091-0010	12-19-03	Adopt	2-1-04
Ch. 541 Sec. 3				177-091-0020	12-19-03	Adopt	2-1-04
150-OL 2003	12-31-03	Adopt	2-1-04	177-091-0030	12-19-03	Adopt	2-1-04
Ch. 621 Sec. 109(1)				177-091-0040	12-19-03	Adopt	2-1-04
150-OR Laws 2003	1-1-04	Adopt(T)	1-1-04	177-091-0050	12-19-03	Adopt	2-1-04
Ch. 818				177-091-0060	12-19-03	Adopt	2-1-04
161-006-0160	11-24-03	Amend	1-1-04	177-091-0070	12-19-03	Adopt	2-1-04
161-015-0030	11-24-03	Amend	1-1-04	177-091-0080	12-19-03	Adopt	2-1-04
161-020-0045	11-24-03	Amend	1-1-04	177-091-0090	12-19-03	Adopt	2-1-04
161-020-0055	11-24-03	Amend	1-1-04	177-091-0100	12-19-03	Adopt	2-1-04
161-020-0140	11-24-03	Amend	1-1-04	177-091-0110	12-19-03	Adopt	2-1-04
161-025-0050	11-24-03	Amend	1-1-04	213-001-0000	1-1-04	Amend	2-1-04
161-050-0040	11-24-03	Amend	1-1-04	213-001-0005	1-1-04	Amend	2-1-04
161-050-0050	11-24-03	Amend	1-1-04	213-003-0001	1-1-04	Amend	2-1-04
165-001-0090	12-31-03	Adopt	2-1-04	213-005-0001	1-1-04	Amend	2-1-04
165-002-0005	12-5-03	Amend	1-1-04	213-005-0004	1-1-04	Amend	2-1-04
165-002-0010	12-5-03	Amend	1-1-04	213-005-0007	1-1-04	Amend	2-1-04
165-002-0025	12-5-03	Amend	1-1-04	213-011-0003	1-1-04	Amend	2-1-04
165-007-0030	12-31-03	Amend	2-1-04	213-017-0001	1-1-04	Amend	2-1-04
165-010-0005	12-5-03	Amend	1-1-04	213-017-0002	1-1-04	Amend	2-1-04
165-010-0060	12-5-03	Amend	1-1-04	213-017-0003	1-1-04	Amend	2-1-04
165-010-0080	12-5-03	Amend	1-1-04	213-017-0004	1-1-04	Amend	2-1-04
165-010-0090	12-5-03	Amend	1-1-04	213-017-0005	1-1-04	Amend	2-1-04
165-012-0005	12-12-03	Amend	1-1-04	213-017-0006	1-1-04	Amend	2-1-04
165-012-0050	12-5-03	Amend	1-1-04	213-017-0007	1-1-04	Amend	2-1-04
165-012-0060	12-5-03	Amend	1-1-04	213-017-0008	1-1-04	Amend	2-1-04
165-012-0230	12-5-03	Amend	1-1-04	213-017-0009	1-1-04	Amend	2-1-04
165-012-0230	12-15-03	Amend(T)	1-1-04	213-017-0010	1-1-04	Amend	2-1-04
165-013-0010	12-5-03	Amend	1-1-04	213-017-0011	1-1-04	Amend	2-1-04
165-013-0020	12-5-03	Amend	1-1-04	213-018-0038	1-1-04	Amend	2-1-04
165-014-0005	12-5-03	Amend	1-1-04	213-018-0047	1-1-04	Adopt	2-1-04
165-014-0006	12-5-03	Repeal	1-1-04	213-018-0048	1-1-04	Adopt	2-1-04
165-014-0080	12-5-03	Repeal	1-1-04	213-018-0050	1-1-04	Amend	2-1-04
165-014-0085	12-5-03	Repeal	1-1-04	213-018-0090	1-1-04	Amend	2-1-04
165-020-0005	12-5-03	Amend	1-1-04	213-019-0007	1-1-04	Amend	2-1-04
166-001-0000	11-24-03	Amend	1-1-04	213-019-0008	1-1-04	Amend	2-1-04
166-101-0010	11-24-03	Amend	1-1-04	213-019-0010	1-1-04	Amend	2-1-04
166-200-0130	11-24-03	Amend	1-1-04	213-019-0011	1-1-04	Amend	2-1-04
166-500-0000	11-20-03	Amend	1-1-04	255-060-0011	1-14-04	Amend(T)	2-1-04
166-500-0015	11-20-03	Amend	1-1-04	255-070-0001	1-14-04	Amend	2-1-04
166-500-0040	11-20-03	Amend	1-1-04	259-008-0010	12-22-03	Amend	2-1-04
166-500-0045	11-20-03	Amend	1-1-04	259-008-0025	12-22-03	Amend	2-1-04
166-500-0050	11-20-03	Amend	1-1-04	274-020-0388	1-15-04	Amend(T)	2-1-04
166-500-0055	11-20-03	Amend	1-1-04	274-040-0015	12-31-03	Amend	2-1-04
170-060-1000	1-15-04	Adopt(T)	2-1-04	274-040-0015(T)	12-31-03	Repeal	2-1-04
177-045-0000	1-5-04	Amend(T)	2-1-04	274-040-0030	12-31-03	Amend	2-1-04
177-045-0010	1-5-04	Amend(T)	2-1-04	274-040-0030(T)	12-31-03	Repeal	2-1-04
177-045-0020	1-5-04	Suspend	2-1-04	291-001-0020	12-12-03	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
291-001-0025	12-12-03	Amend	1-1-04	309-041-2010	12-28-03	Am. & Ren.	2-1-04
291-001-0070	12-12-03	Repeal	1-1-04	309-041-2020	12-28-03	Am. & Ren.	2-1-04
291-062-0010	1-14-04	Suspend	2-1-04	309-041-2030	12-28-03	Am. & Ren.	2-1-04
291-062-0020	1-14-04	Suspend	2-1-04	309-041-2040	12-28-03	Am. & Ren.	2-1-04
291-062-0030	1-14-04	Suspend	2-1-04	309-041-2050	12-28-03	Am. & Ren.	2-1-04
291-062-0040	1-14-04	Suspend	2-1-04	309-041-2060	12-28-03	Am. & Ren.	2-1-04
291-062-0050	1-14-04	Suspend	2-1-04	309-041-2070	12-28-03	Am. & Ren.	2-1-04
291-062-0060	1-14-04	Suspend	2-1-04	309-041-2080	12-28-03	Am. & Ren.	2-1-04
291-062-0070	1-14-04	Suspend	2-1-04	309-041-2090	12-28-03	Am. & Ren.	2-1-04
291-062-0080	1-14-04	Suspend	2-1-04	309-041-2110	12-28-03	Am. & Ren.	2-1-04
291-062-0100	1-14-04	Adopt(T)	2-1-04	309-041-2120	12-28-03	Am. & Ren.	2-1-04
291-062-0110	1-14-04	Adopt(T)	2-1-04	309-041-2130	12-28-03	Am. & Ren.	2-1-04
291-062-0120	1-14-04	Adopt(T)	2-1-04	309-041-2140	12-28-03	Am. & Ren.	2-1-04
291-062-0130	1-14-04	Adopt(T)	2-1-04	309-041-2150	12-28-03	Am. & Ren.	2-1-04
291-062-0140	1-14-04	Adopt(T)	2-1-04	309-041-2160	12-28-03	Am. & Ren.	2-1-04
291-062-0150	1-14-04	Adopt(T)	2-1-04	309-041-2170	12-28-03	Am. & Ren.	2-1-04
291-062-0160	1-14-04	Adopt(T)	2-1-04	309-041-2180	12-28-03	Am. & Ren.	2-1-04
291-064-0060	12-2-03	Amend	1-1-04	309-044-0100	12-11-03	Amend(T)	1-1-04
309-041-0300	1-1-04	Repeal	2-1-04	309-044-0110	12-11-03	Amend(T)	1-1-04
309-041-0305	1-1-04	Repeal	2-1-04	309-044-0120	12-11-03	Amend(T)	1-1-04
309-041-0310	1-1-04	Repeal	2-1-04	309-044-0130	12-11-03	Amend(T)	1-1-04
309-041-0315	1-1-04	Repeal	2-1-04	309-044-0140	12-11-03	Amend(T)	1-1-04
309-041-0320	1-1-04	Repeal	2-1-04	309-044-0150	12-11-03	Amend(T)	1-1-04
309-041-0375	1-1-04	Repeal	2-1-04	309-044-0160	12-11-03	Amend(T)	1-1-04
309-041-0400	1-1-04	Repeal	2-1-04	309-044-0170	12-11-03	Amend(T)	1-1-04
309-041-0405	1-1-04	Repeal	2-1-04	309-044-0180	12-11-03	Amend(T)	1-1-04
309-041-0410	1-1-04	Repeal	2-1-04	309-044-0190	12-11-03	Amend(T)	1-1-04
309-041-0415	1-1-04	Repeal	2-1-04	309-044-0200	12-11-03	Amend(T)	1-1-04
309-041-0435	1-1-04	Repeal	2-1-04	309-044-0210	12-11-03	Amend(T)	1-1-04
309-041-0445	1-1-04	Repeal	2-1-04	309-047-0000	12-28-03	Am. & Ren.	2-1-04
309-041-0450	1-1-04	Repeal	2-1-04	309-047-0005	12-28-03	Am. & Ren.	2-1-04
309-041-0455	1-1-04	Repeal	2-1-04	309-047-0010	12-28-03	Am. & Ren.	2-1-04
309-041-0460	1-1-04	Repeal	2-1-04	309-047-0015	12-28-03	Am. & Ren.	2-1-04
309-041-0465	1-1-04	Repeal	2-1-04	309-047-0018	12-28-03	Am. & Ren.	2-1-04
309-041-0470	1-1-04	Repeal	2-1-04	309-047-0025	12-28-03	Am. & Ren.	2-1-04
309-041-0475	1-1-04	Repeal	2-1-04	309-047-0030	12-28-03	Am. & Ren.	2-1-04
309-041-0480	1-1-04	Repeal	2-1-04	309-047-0035	12-28-03	Am. & Ren.	2-1-04
309-041-1750	12-28-03	Am. & Ren.	2-1-04	309-047-0040	12-28-03	Am. & Ren.	2-1-04
309-041-1760	12-28-03	Am. & Ren.	2-1-04	309-047-0045	12-28-03	Am. & Ren.	2-1-04
309-041-1770	12-28-03	Am. & Ren.	2-1-04	309-047-0050	12-28-03	Am. & Ren.	2-1-04
309-041-1780	12-28-03	Am. & Ren.	2-1-04	309-047-0055	12-28-03	Am. & Ren.	2-1-04
309-041-1790	12-28-03	Am. & Ren.	2-1-04	309-047-0060	12-28-03	Am. & Ren.	2-1-04
309-041-1800	12-28-03	Am. & Ren.	2-1-04	309-047-0065	12-28-03	Am. & Ren.	2-1-04
309-041-1810	12-28-03	Am. & Ren.	2-1-04	309-047-0070	12-28-03	Am. & Ren.	2-1-04
309-041-1820	12-28-03	Am. & Ren.	2-1-04	309-047-0075	12-28-03	Am. & Ren.	2-1-04
309-041-1830	12-28-03	Am. & Ren.	2-1-04	309-047-0080	12-28-03	Am. & Ren.	2-1-04
309-041-1840	12-28-03	Am. & Ren.	2-1-04	309-047-0085	12-28-03	Am. & Ren.	2-1-04
309-041-1850	12-28-03	Am. & Ren.	2-1-04	309-047-0090	12-28-03	Am. & Ren.	2-1-04
309-041-1860	12-28-03	Am. & Ren.	2-1-04	309-047-0095	12-28-03	Am. & Ren.	2-1-04
309-041-1870	12-28-03	Am. & Ren.	2-1-04	309-047-0100	12-28-03	Am. & Ren.	2-1-04
309-041-1880	12-28-03	Am. & Ren.	2-1-04	309-047-0105	12-28-03	Am. & Ren.	2-1-04
309-041-1890	12-28-03	Am. & Ren.	2-1-04	309-047-0110	12-28-03	Am. & Ren.	2-1-04
309-041-1900	12-28-03	Am. & Ren.	2-1-04	309-047-0115	12-28-03	Am. & Ren.	2-1-04
309-041-1910	12-28-03	Am. & Ren.	2-1-04	309-047-0120	12-28-03	Am. & Ren.	2-1-04
309-041-1920	12-28-03	Am. & Ren.	2-1-04	309-047-0125	12-28-03	Am. & Ren.	2-1-04
309-041-2000	12-28-03	Am. & Ren.	2-1-04	309-047-0130	12-28-03	Am. & Ren.	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
309-047-0133	12-28-03	Am. & Ren.	2-1-04	333-020-0130	12-16-03	Amend	2-1-04
309-047-0135	12-28-03	Am. & Ren.	2-1-04	333-020-0135	12-16-03	Amend	2-1-04
309-047-0140	12-28-03	Am. & Ren.	2-1-04	333-020-0140	12-16-03	Amend	2-1-04
309-048-0000	1-1-04	Repeal	2-1-04	333-020-0145	12-16-03	Amend	2-1-04
309-048-0005	1-1-04	Repeal	2-1-04	333-020-0147	12-16-03	Adopt	2-1-04
309-048-0010	1-1-04	Repeal	2-1-04	333-020-0149	12-16-03	Adopt	2-1-04
309-048-0015	1-1-04	Repeal	2-1-04	333-020-0150	12-16-03	Amend	2-1-04
309-048-0020	1-1-04	Repeal	2-1-04	333-020-0151	12-16-03	Adopt	2-1-04
309-048-0025	1-1-04	Repeal	2-1-04	333-020-0153	12-16-03	Adopt	2-1-04
309-048-0030	1-1-04	Repeal	2-1-04	333-020-0155	12-16-03	Amend	2-1-04
309-048-0035	1-1-04	Repeal	2-1-04	333-020-0160	12-16-03	Amend	2-1-04
309-049-0030	1-1-04	Repeal	2-1-04	333-020-0165	12-16-03	Amend	2-1-04
309-049-0035	1-1-04	Repeal	2-1-04	333-054-0000	1-5-04	Amend	2-1-04
309-049-0040	1-1-04	Repeal	2-1-04	333-054-0000(T)	1-5-04	Repeal	2-1-04
309-049-0045	1-1-04	Repeal	2-1-04	333-054-0010	1-5-04	Amend	2-1-04
309-049-0050	1-1-04	Repeal	2-1-04	333-054-0010(T)	1-5-04	Repeal	2-1-04
309-049-0055	1-1-04	Repeal	2-1-04	333-054-0020	1-5-04	Amend	2-1-04
309-049-0060	1-1-04	Repeal	2-1-04	333-054-0020(T)	1-5-04	Repeal	2-1-04
309-049-0065	1-1-04	Repeal	2-1-04	333-054-0030	1-5-04	Amend	2-1-04
309-049-0070	1-1-04	Repeal	2-1-04	333-054-0030(T)	1-5-04	Repeal	2-1-04
309-049-0075	1-1-04	Repeal	2-1-04	333-054-0040	1-5-04	Amend	2-1-04
309-049-0080	1-1-04	Repeal	2-1-04	333-054-0040(T)	1-5-04	Repeal	2-1-04
309-049-0085	1-1-04	Repeal	2-1-04	333-054-0050	1-5-04	Amend	2-1-04
309-049-0090	1-1-04	Repeal	2-1-04	333-054-0050(T)	1-5-04	Repeal	2-1-04
309-049-0095	1-1-04	Repeal	2-1-04	333-054-0060	1-5-04	Amend	2-1-04
309-049-0100	1-1-04	Repeal	2-1-04	333-054-0060(T)	1-5-04	Repeal	2-1-04
309-049-0105	1-1-04	Repeal	2-1-04	333-054-0070	1-5-04	Amend	2-1-04
309-049-0110	1-1-04	Repeal	2-1-04	333-054-0070(T)	1-5-04	Repeal	2-1-04
309-049-0115	1-1-04	Repeal	2-1-04	333-054-0090	1-5-04	Repeal	2-1-04
309-049-0120	1-1-04	Repeal	2-1-04	333-054-0100	1-5-04	Adopt	2-1-04
309-049-0130	1-1-04	Repeal	2-1-04	333-054-0100(T)	1-5-04	Repeal	2-1-04
309-049-0135	1-1-04	Repeal	2-1-04	333-064-0005	12-8-03	Amend	1-1-04
309-049-0140	1-1-04	Repeal	2-1-04	333-064-0005(T)	12-8-03	Repeal	1-1-04
309-049-0145	1-1-04	Repeal	2-1-04	333-064-0010	12-8-03	Amend	1-1-04
309-049-0150	1-1-04	Repeal	2-1-04	333-064-0010(T)	12-8-03	Repeal	1-1-04
309-049-0155	1-1-04	Repeal	2-1-04	333-064-0015	12-8-03	Amend	1-1-04
309-049-0160	1-1-04	Repeal	2-1-04	333-064-0015(T)	12-8-03	Repeal	1-1-04
309-049-0165	1-1-04	Repeal	2-1-04	333-064-0025	12-8-03	Amend	1-1-04
309-049-0170	1-1-04	Repeal	2-1-04	333-064-0025(T)	12-8-03	Repeal	1-1-04
309-049-0175	1-1-04	Repeal	2-1-04	333-064-0030	12-8-03	Amend	1-1-04
309-049-0180	1-1-04	Repeal	2-1-04	333-064-0030(T)	12-8-03	Repeal	1-1-04
309-049-0185	1-1-04	Repeal	2-1-04	333-064-0035	12-8-03	Amend	1-1-04
309-049-0190	1-1-04	Repeal	2-1-04	333-064-0035(T)	12-8-03	Repeal	1-1-04
309-049-0193	1-1-04	Repeal	2-1-04	333-064-0040	12-8-03	Amend	1-1-04
309-049-0195	1-1-04	Repeal	2-1-04	333-064-0040(T)	12-8-03	Repeal	1-1-04
309-049-0200	1-1-04	Repeal	2-1-04	333-064-0060	12-8-03	Amend	1-1-04
309-049-0205	1-1-04	Repeal	2-1-04	333-064-0060(T)	12-8-03	Repeal	1-1-04
309-049-0207	1-1-04	Repeal	2-1-04	333-064-0065	12-8-03	Amend	1-1-04
309-049-0210	1-1-04	Repeal	2-1-04	333-064-0065(T)	12-8-03	Repeal	1-1-04
309-049-0215	1-1-04	Repeal	2-1-04	333-064-0070	12-8-03	Adopt	1-1-04
309-049-0220	1-1-04	Repeal	2-1-04	333-064-0070(T)	12-8-03	Repeal	1-1-04
309-049-0225	1-1-04	Repeal	2-1-04	340-011-0005	12-12-03	Amend	1-1-04
333-013-0006	1-2-04	Repeal	2-1-04	340-011-0035	12-12-03	Am. & Ren.	1-1-04
333-013-0026	1-2-04	Repeal	2-1-04	340-011-0097	12-12-03	Am. & Ren.	1-1-04
333-020-0125	12-16-03	Amend	2-1-04	340-011-0098	12-12-03	Am. & Ren.	1-1-04
333-020-0127	12-16-03	Adopt	2-1-04	340-011-0103	12-12-03	Am. & Ren.	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-011-0106	12-12-03	Renumber	1-1-04	340-041-0175	12-9-03	Adopt	1-1-04
340-011-0107	12-12-03	Am. & Ren.	1-1-04	340-041-0180	12-9-03	Adopt	1-1-04
340-011-0122	12-12-03	Renumber	1-1-04	340-041-0184	12-9-03	Adopt	1-1-04
340-011-0124	12-12-03	Am. & Ren.	1-1-04	340-041-0185	12-9-03	Adopt	1-1-04
340-011-0131	12-12-03	Am. & Ren.	1-1-04	340-041-0190	12-9-03	Adopt	1-1-04
340-011-0132	12-12-03	Am. & Ren.	1-1-04	340-041-0194	12-9-03	Adopt	1-1-04
340-011-0136	12-12-03	Am. & Ren.	1-1-04	340-041-0195	12-9-03	Adopt	1-1-04
340-011-0520	12-12-03	Adopt	1-1-04	340-041-0201	12-9-03	Adopt	1-1-04
340-011-0535	12-12-03	Adopt	1-1-04	340-041-0202	12-9-03	Repeal	1-1-04
340-011-0545	12-12-03	Adopt	1-1-04	340-041-0204	12-9-03	Adopt	1-1-04
340-011-0550	12-12-03	Adopt	1-1-04	340-041-0205	12-9-03	Repeal	1-1-04
340-011-0555	12-12-03	Adopt	1-1-04	340-041-0207	12-9-03	Adopt	1-1-04
340-011-0580	12-12-03	Adopt	1-1-04	340-041-0215	12-9-03	Repeal	1-1-04
340-011-0585	12-12-03	Adopt	1-1-04	340-041-0220	12-9-03	Adopt	1-1-04
340-041-0001	12-9-03	Amend	1-1-04	340-041-0224	12-9-03	Adopt	1-1-04
340-041-0002	12-9-03	Adopt	1-1-04	340-041-0225	12-9-03	Adopt	1-1-04
340-041-0004	12-9-03	Adopt	1-1-04	340-041-0230	12-9-03	Adopt	1-1-04
340-041-0006	12-9-03	Repeal	1-1-04	340-041-0234	12-9-03	Adopt	1-1-04
340-041-0007	12-9-03	Adopt	1-1-04	340-041-0235	12-9-03	Adopt	1-1-04
340-041-0009	12-9-03	Adopt	1-1-04	340-041-0242	12-9-03	Repeal	1-1-04
340-041-0016	12-9-03	Adopt	1-1-04	340-041-0245	12-9-03	Repeal	1-1-04
340-041-0021	12-9-03	Adopt	1-1-04	340-041-0250	12-9-03	Adopt	1-1-04
340-041-0026	12-9-03	Repeal	1-1-04	340-041-0254	12-9-03	Adopt	1-1-04
340-041-0027	12-9-03	Am. & Ren.	1-1-04	340-041-0255	12-9-03	Repeal	1-1-04
340-041-0028	12-9-03	Adopt	1-1-04	340-041-0256	12-9-03	Adopt	1-1-04
340-041-0031	12-9-03	Adopt	1-1-04	340-041-0260	12-9-03	Adopt	1-1-04
340-041-0032	12-9-03	Adopt	1-1-04	340-041-0264	12-9-03	Adopt	1-1-04
340-041-0033	12-9-03	Adopt	1-1-04	340-041-0265	12-9-03	Adopt	1-1-04
340-041-0034	12-9-03	Repeal	1-1-04	340-041-0270	12-9-03	Repeal	1-1-04
340-041-0036	12-9-03	Adopt	1-1-04	340-041-0271	12-9-03	Adopt	1-1-04
340-041-0046	12-9-03	Adopt	1-1-04	340-041-0274	12-9-03	Adopt	1-1-04
340-041-0053	12-9-03	Adopt	1-1-04	340-041-0275	12-9-03	Adopt	1-1-04
340-041-0057	12-9-03	Adopt	1-1-04	340-041-0282	12-9-03	Repeal	1-1-04
340-041-0061	12-9-03	Adopt	1-1-04	340-041-0285	12-9-03	Repeal	1-1-04
340-041-0101	12-9-03	Adopt	1-1-04	340-041-0286	12-9-03	Adopt	1-1-04
340-041-0103	12-9-03	Adopt	1-1-04	340-041-0289	12-9-03	Adopt	1-1-04
340-041-0104	12-9-03	Adopt	1-1-04	340-041-0290	12-9-03	Adopt	1-1-04
340-041-0120	12-9-03	Repeal	1-1-04	340-041-0295	12-9-03	Repeal	1-1-04
340-041-0121	12-9-03	Adopt	1-1-04	340-041-0300	12-9-03	Adopt	1-1-04
340-041-0122	12-9-03	Adopt	1-1-04	340-041-0304	12-9-03	Adopt	1-1-04
340-041-0124	12-9-03	Adopt	1-1-04	340-041-0305	12-9-03	Adopt	1-1-04
340-041-0130	12-9-03	Adopt	1-1-04	340-041-0310	12-9-03	Adopt	1-1-04
340-041-0133	12-9-03	Adopt	1-1-04	340-041-0314	12-9-03	Adopt	1-1-04
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

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-041-0350	12-9-03	Adopt	1-1-04	340-228-0480	12-12-03	Adopt	1-1-04
340-041-0362	12-9-03	Repeal	1-1-04	340-228-0490	12-12-03	Adopt	1-1-04
340-041-0365	12-9-03	Repeal	1-1-04	340-228-0500	12-12-03	Adopt	1-1-04
340-041-0375	12-9-03	Repeal	1-1-04	340-228-0510	12-12-03	Adopt	1-1-04
340-041-0385	12-9-03	Repeal	1-1-04	340-228-0520	12-12-03	Adopt	1-1-04
340-041-0442	12-9-03	Repeal	1-1-04	340-228-0530	12-12-03	Adopt	1-1-04
340-041-0445	12-9-03	Repeal	1-1-04	410-120-1195	1-1-04	Amend	2-1-04
340-041-0455	12-9-03	Repeal	1-1-04	410-121-0021	12-1-03	Adopt	1-1-04
340-041-0470	12-9-03	Repeal	1-1-04	410-121-0040	12-1-03	Amend	1-1-04
340-041-0482	12-9-03	Repeal	1-1-04	410-121-0040	12-15-03	Amend(T)	1-1-04
340-041-0485	12-9-03	Repeal	1-1-04	410-121-0140	12-1-03	Amend	1-1-04
340-041-0495	12-9-03	Repeal	1-1-04	410-121-0300	12-1-03	Amend(T)	1-1-04
340-041-0522	12-9-03	Repeal	1-1-04	410-125-0141	1-1-04	Amend	2-1-04
340-041-0525	12-9-03	Repeal	1-1-04	410-125-0181	1-1-04	Amend	2-1-04
340-041-0535	12-9-03	Repeal	1-1-04	410-125-0195	1-1-04	Amend	2-1-04
340-041-0562	12-9-03	Repeal	1-1-04	410-127-0080	1-1-04	Amend	2-1-04
340-041-0565	12-9-03	Repeal	1-1-04	410-129-0080	12-1-03	Amend	1-1-04
340-041-0575	12-9-03	Repeal	1-1-04	410-131-0160	1-1-04	Amend	2-1-04
340-041-0580	12-9-03	Repeal	1-1-04	410-132-0100	1-1-04	Amend	2-1-04
340-041-0602	12-9-03	Repeal	1-1-04	410-133-0090	12-15-03	Amend(T)	1-1-04
340-041-0605	12-9-03	Repeal	1-1-04	410-141-0480	1-1-04	Amend	2-1-04
340-041-0615	12-9-03	Repeal	1-1-04	410-141-0500	1-1-04	Amend	2-1-04
340-041-0642	12-9-03	Repeal	1-1-04	410-141-0520	1-1-04	Amend	2-1-04
340-041-0645	12-9-03	Repeal	1-1-04	410-142-0300	12-1-03	Amend	1-1-04
340-041-0655	12-9-03	Repeal	1-1-04	411-030-0020	12-11-03	Amend(T)	1-1-04
340-041-0682	12-9-03	Repeal	1-1-04	411-030-0033	12-11-03	Amend(T)	1-1-04
340-041-0765	12-9-03	Repeal	1-1-04	411-030-0040	12-11-03	Amend(T)	1-1-04
340-041-0775	12-9-03	Repeal	1-1-04	411-030-0060	12-11-03	Amend(T)	1-1-04
340-041-0802	12-9-03	Repeal	1-1-04	411-030-0065	12-11-03	Amend(T)	1-1-04
340-041-0805	12-9-03	Repeal	1-1-04	411-300-0110	12-11-03	Amend(T)	1-1-04
340-041-0815	12-9-03	Repeal	1-1-04	411-320-0010	1-1-04	Adopt	2-1-04
340-041-0842	12-9-03	Repeal	1-1-04	411-320-0020	1-1-04	Adopt	2-1-04
340-041-0845	12-9-03	Repeal	1-1-04	411-320-0030	1-1-04	Adopt	2-1-04
340-041-0855	12-9-03	Repeal	1-1-04	411-320-0040	1-1-04	Adopt	2-1-04
340-041-0882	12-9-03	Repeal	1-1-04	411-320-0050	1-1-04	Adopt	2-1-04
340-041-0885	12-9-03	Repeal	1-1-04	411-320-0060	1-1-04	Adopt	2-1-04
340-041-0895	12-9-03	Repeal	1-1-04	411-320-0070	1-1-04	Adopt	2-1-04
340-041-0922	12-9-03	Repeal	1-1-04	411-320-0080	1-1-04	Adopt	2-1-04
340-041-0925	12-9-03	Repeal	1-1-04	411-320-0090	1-1-04	Adopt	2-1-04
340-041-0935	12-9-03	Repeal	1-1-04	411-320-0100	1-1-04	Adopt	2-1-04
340-041-0962	12-9-03	Repeal	1-1-04	411-320-0110	1-1-04	Adopt	2-1-04
340-041-0965	12-9-03	Repeal	1-1-04	411-320-0120	1-1-04	Adopt	2-1-04
340-041-0975	12-9-03	Repeal	1-1-04	411-320-0130	1-1-04	Adopt	2-1-04
340-200-0040	12-12-03	Amend	1-1-04	411-320-0140	1-1-04	Adopt	2-1-04
340-214-0400	12-12-03	Adopt	1-1-04	411-320-0150	1-1-04	Adopt	2-1-04
340-214-0410	12-12-03	Adopt	1-1-04	411-320-0160	1-1-04	Adopt	2-1-04
340-214-0420	12-12-03	Adopt	1-1-04	411-320-0170	1-1-04	Adopt	2-1-04
340-214-0430	12-12-03	Adopt	1-1-04	411-320-0180	1-1-04	Adopt	2-1-04
340-228-0400	12-12-03	Adopt	1-1-04	411-320-0190	1-1-04	Adopt	2-1-04
340-228-0410	12-12-03	Adopt	1-1-04	411-320-0200	1-1-04	Adopt	2-1-04
340-228-0420	12-12-03	Adopt	1-1-04	411-325-0010	1-1-04	Adopt	2-1-04
340-228-0430	12-12-03	Adopt	1-1-04	411-325-0020	1-1-04	Adopt	2-1-04
340-228-0440	12-12-03	Adopt	1-1-04	411-325-0030	1-1-04	Adopt	2-1-04
340-228-0450	12-12-03	Adopt	1-1-04	411-325-0040	1-1-04	Adopt	2-1-04
340-228-0460	12-12-03	Adopt	1-1-04	411-325-0050	1-1-04	Adopt	2-1-04
340-228-0470	12-12-03	Adopt	1-1-04	411-325-0060	1-1-04	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
411-325-0070	1-1-04	Adopt	2-1-04	411-330-0150	12-28-03	Adopt	2-1-04
411-325-0080	1-1-04	Adopt	2-1-04	411-330-0160	12-28-03	Adopt	2-1-04
411-325-0090	1-1-04	Adopt	2-1-04	411-330-0170	12-28-03	Adopt	2-1-04
411-325-0100	1-1-04	Adopt	2-1-04	413-010-0700	1-1-04	Amend	2-1-04
411-325-0110	1-1-04	Adopt	2-1-04	413-010-0705	1-1-04	Amend	2-1-04
411-325-0120	1-1-04	Adopt	2-1-04	413-010-0712	1-1-04	Amend	2-1-04
411-325-0130	1-1-04	Adopt	2-1-04	413-010-0714	1-1-04	Amend	2-1-04
411-325-0140	1-1-04	Adopt	2-1-04	413-010-0715	1-1-04	Amend	2-1-04
411-325-0150	1-1-04	Adopt	2-1-04	413-010-0716	1-1-04	Amend	2-1-04
411-325-0160	1-1-04	Adopt	2-1-04	413-010-0717	1-1-04	Amend	2-1-04
411-325-0170	1-1-04	Adopt	2-1-04	413-010-0718	1-1-04	Amend	2-1-04
411-325-0180	1-1-04	Adopt	2-1-04	413-010-0719	1-1-04	Repeal	2-1-04
411-325-0190	1-1-04	Adopt	2-1-04	413-010-0720	1-1-04	Amend	2-1-04
411-325-0200	1-1-04	Adopt	2-1-04	413-010-0721	1-1-04	Amend	2-1-04
411-325-0210	1-1-04	Adopt	2-1-04	413-010-0722	1-1-04	Amend	2-1-04
411-325-0220	1-1-04	Adopt	2-1-04	413-010-0723	1-1-04	Amend	2-1-04
411-325-0230	1-1-04	Adopt	2-1-04	413-010-0732	1-1-04	Amend	2-1-04
411-325-0240	1-1-04	Adopt	2-1-04	413-010-0735	1-1-04	Amend	2-1-04
411-325-0250	1-1-04	Adopt	2-1-04	413-010-0738	1-1-04	Amend	2-1-04
411-325-0260	1-1-04	Adopt	2-1-04	413-010-0740	1-1-04	Amend	2-1-04
411-325-0270	1-1-04	Adopt	2-1-04	413-010-0743	1-1-04	Amend	2-1-04
411-325-0280	1-1-04	Adopt	2-1-04	413-010-0745	1-1-04	Amend	2-1-04
411-325-0290	1-1-04	Adopt	2-1-04	413-010-0746	1-1-04	Amend	2-1-04
411-325-0300	1-1-04	Adopt	2-1-04	413-010-0748	1-1-04	Adopt	2-1-04
411-325-0310	1-1-04	Adopt	2-1-04	413-010-0750	1-1-04	Amend	2-1-04
411-325-0320	1-1-04	Adopt	2-1-04	413-040-0200	1-1-04	Amend	2-1-04
411-325-0330	1-1-04	Adopt	2-1-04	413-040-0205	1-1-04	Adopt	2-1-04
411-325-0340	1-1-04	Adopt	2-1-04	413-040-0210	1-1-04	Amend	2-1-04
411-325-0350	1-1-04	Adopt	2-1-04	413-040-0215	1-1-04	Adopt	2-1-04
411-325-0360	1-1-04	Adopt	2-1-04	413-040-0220	1-1-04	Repeal	2-1-04
411-325-0370	1-1-04	Adopt	2-1-04	413-040-0230	1-1-04	Amend	2-1-04
411-325-0380	1-1-04	Adopt	2-1-04	413-040-0240	1-1-04	Amend	2-1-04
411-325-0390	1-1-04	Adopt	2-1-04	413-040-0250	1-1-04	Am. & Ren.	2-1-04
411-325-0400	1-1-04	Adopt	2-1-04	413-040-0260	1-1-04	Amend	2-1-04
411-325-0410	1-1-04	Adopt	2-1-04	413-040-0265	1-1-04	Adopt	2-1-04
411-325-0420	1-1-04	Adopt	2-1-04	413-040-0270	1-1-04	Amend	2-1-04
411-325-0430	1-1-04	Adopt	2-1-04	413-040-0280	1-1-04	Amend	2-1-04
411-325-0440	1-1-04	Adopt	2-1-04	413-040-0290	1-1-04	Amend	2-1-04
411-325-0450	1-1-04	Adopt	2-1-04	413-040-0300	1-1-04	Amend	2-1-04
411-325-0460	1-1-04	Adopt	2-1-04	413-040-0310	1-1-04	Amend	2-1-04
411-325-0470	1-1-04	Adopt	2-1-04	413-040-0320	1-1-04	Amend	2-1-04
411-325-0480	1-1-04	Adopt	2-1-04	413-040-0330	1-1-04	Amend	2-1-04
411-330-0010	12-28-03	Adopt	2-1-04	413-050-0200	12-12-03	Amend	1-1-04
411-330-0020	12-28-03	Adopt	2-1-04	413-050-0210	12-12-03	Amend	1-1-04
411-330-0030	12-28-03	Adopt	2-1-04	413-050-0220	12-12-03	Amend	1-1-04
411-330-0040	12-28-03	Adopt	2-1-04	413-050-0230	12-12-03	Amend	1-1-04
411-330-0050	12-28-03	Adopt	2-1-04	413-050-0240	12-12-03	Amend	1-1-04
411-330-0060	12-28-03	Adopt	2-1-04	413-050-0250	12-12-03	Amend	1-1-04
411-330-0070	12-28-03	Adopt	2-1-04	413-050-0260	12-12-03	Amend	1-1-04
411-330-0080	12-28-03	Adopt	2-1-04	413-050-0270	12-12-03	Amend	1-1-04
411-330-0090	12-28-03	Adopt	2-1-04	413-050-0280	12-12-03	Amend	1-1-04
411-330-0100	12-28-03	Adopt	2-1-04	413-050-0290	12-12-03	Amend	1-1-04
411-330-0110	12-28-03	Adopt	2-1-04	413-050-0300	12-12-03	Amend	1-1-04
411-330-0120	12-28-03	Adopt	2-1-04	413-070-0500	1-1-04	Amend	2-1-04
411-330-0130	12-28-03	Adopt	2-1-04	413-070-0505	1-1-04	Amend	2-1-04
411-330-0140	12-28-03	Adopt	2-1-04	413-070-0510	1-1-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-070-0515	1-1-04	Amend	2-1-04	414-050-0010	12-28-03	Adopt(T)	2-1-04
413-070-0517	1-1-04	Amend	2-1-04	414-061-0000	12-7-03	Amend	1-1-04
413-070-0915	1-1-04	Amend(T)	2-1-04	414-061-0010	12-7-03	Amend	1-1-04
413-070-0935	1-1-04	Amend(T)	2-1-04	414-061-0020	12-7-03	Amend	1-1-04
413-070-0937	1-1-04	Amend(T)	2-1-04	414-061-0030	12-7-03	Amend	1-1-04
413-070-0980	1-1-04	Amend(T)	2-1-04	414-061-0040	12-7-03	Amend	1-1-04
413-070-0981	1-1-04	Amend(T)	2-1-04	414-061-0050	12-7-03	Amend	1-1-04
413-070-0981(T)	1-1-04	Suspend	2-1-04	414-061-0060	12-7-03	Amend	1-1-04
413-070-0982	1-1-04	Adopt(T)	2-1-04	414-061-0070	12-7-03	Amend	1-1-04
413-110-0000	1-1-04	Amend	2-1-04	414-061-0080	12-7-03	Amend	1-1-04
413-110-0010	1-1-04	Amend	2-1-04	414-061-0090	12-7-03	Amend	1-1-04
413-110-0020	1-1-04	Amend	2-1-04	414-061-0100	12-7-03	Amend	1-1-04
413-110-0030	1-1-04	Amend	2-1-04	414-061-0110	12-7-03	Amend	1-1-04
413-110-0040	1-1-04	Amend	2-1-04	414-061-0120	12-7-03	Amend	1-1-04
413-110-0100	1-1-04	Amend	2-1-04	414-150-0055	12-28-03	Amend	2-1-04
413-110-0110	1-1-04	Amend	2-1-04	414-150-0080	12-28-03	Amend	2-1-04
413-110-0120	1-1-04	Amend	2-1-04	414-150-0120	12-28-03	Amend	2-1-04
413-110-0130	1-1-04	Amend	2-1-04	414-205-0000	12-28-03	Amend	2-1-04
413-110-0140	1-1-04	Amend	2-1-04	414-300-0000	12-28-03	Amend	2-1-04
413-110-0300	1-1-04	Amend	2-1-04	414-300-0005	12-28-03	Amend	2-1-04
413-110-0310	1-1-04	Amend	2-1-04	414-300-0010	12-28-03	Amend	2-1-04
413-110-0320	1-1-04	Amend	2-1-04	414-300-0180	12-28-03	Amend	2-1-04
413-110-0330	1-1-04	Amend	2-1-04	414-300-0190	12-28-03	Amend	2-1-04
413-110-0340	1-1-04	Amend	2-1-04	414-300-0200	12-28-03	Amend	2-1-04
413-110-0350	1-1-04	Amend	2-1-04	414-300-0210	12-28-03	Amend	2-1-04
413-110-0360	1-1-04	Amend	2-1-04	414-300-0280	12-28-03	Amend	2-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	414-300-0360	12-28-03	Amend	2-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-120-0500	1-1-04	Amend	2-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-120-0510	1-1-04	Amend	2-1-04	414-350-0020	12-28-03	Amend	2-1-04
413-120-0520	1-1-04	Amend	2-1-04	414-350-0210	12-28-03	Amend	2-1-04
413-120-0530	1-1-04	Amend	2-1-04	414-350-0235	12-28-03	Amend	2-1-04
413-120-0540	1-1-04	Amend	2-1-04	414-500-0030	12-28-03	Amend	2-1-04
413-120-0550	1-1-04	Adopt	2-1-04	414-600-0000	12-7-03	Suspend	1-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	414-600-0010	12-7-03	Suspend	1-1-04
413-210-0800	1-9-04	Amend	2-1-04	414-600-0020	12-7-03	Suspend	1-1-04
413-210-0806	1-9-04	Amend	2-1-04	414-600-0030	12-7-03	Suspend	1-1-04
413-210-0821	1-9-04	Amend	2-1-04	414-600-0040	12-7-03	Suspend	1-1-04
413-330-0085	12-17-03	Amend(T)	2-1-04	414-600-0050	12-7-03	Suspend	1-1-04
413-330-0087	12-17-03	Amend(T)	2-1-04	414-600-0060	12-7-03	Suspend	1-1-04
413-330-0090	12-17-03	Amend(T)	2-1-04	414-600-0070	12-7-03	Suspend	1-1-04
413-330-0095	12-17-03	Amend(T)	2-1-04	414-600-0080	12-7-03	Suspend	1-1-04
413-330-0097	12-17-03	Adopt(T)	2-1-04	414-600-0090	12-7-03	Suspend	1-1-04
413-330-0098	12-17-03	Adopt(T)	2-1-04	414-600-0100	12-7-03	Suspend	1-1-04
413-330-0900	1-1-04	Amend(T)	2-1-04	414-700-0000	12-7-03	Adopt	1-1-04
413-330-0910	1-1-04	Amend(T)	2-1-04	414-700-0010	12-7-03	Adopt	1-1-04
413-330-0920	1-1-04	Amend(T)	2-1-04	414-700-0020	12-7-03	Adopt	1-1-04
413-330-0930	1-1-04	Amend(T)	2-1-04	414-700-0030	12-7-03	Adopt	1-1-04
413-330-0940	1-1-04	Amend(T)	2-1-04	414-700-0040	12-7-03	Adopt	1-1-04
413-330-0950	1-1-04	Amend(T)	2-1-04	414-700-0050	12-7-03	Adopt	1-1-04
413-330-0960	1-1-04	Suspend	2-1-04	414-700-0060	12-7-03	Adopt	1-1-04
413-330-0970	1-1-04	Amend(T)	2-1-04	414-700-0070	12-7-03	Adopt	1-1-04
413-330-0980	1-1-04	Amend(T)	2-1-04	414-700-0080	12-7-03	Adopt	1-1-04
413-330-0990	1-1-04	Amend(T)	2-1-04	414-700-0090	12-7-03	Adopt	1-1-04
413-330-1000	1-1-04	Amend(T)	2-1-04	436-001-0265	1-1-04	Amend(T)	1-1-04
413-330-1010	1-1-04	Amend(T)	2-1-04	436-009-0008	1-1-04	Amend(T)	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
436-009-0015	1-1-04	Amend(T)	1-1-04	436-050-0170	1-1-04	Amend	1-1-04
436-009-0060	1-1-04	Amend(T)	1-1-04	436-050-0175	1-1-04	Amend	1-1-04
436-009-0070	1-1-04	Amend(T)	1-1-04	436-050-0180	1-1-04	Amend	1-1-04
436-009-0080	1-1-04	Amend(T)	1-1-04	436-050-0185	1-1-04	Amend	1-1-04
436-010-0005	1-1-04	Amend(T)	1-1-04	436-050-0190	1-1-04	Amend	1-1-04
436-010-0008	1-1-04	Amend(T)	1-1-04	436-050-0195	1-1-04	Amend	1-1-04
436-010-0210	1-1-04	Amend(T)	1-1-04	436-050-0200	1-1-04	Amend	1-1-04
436-010-0220	1-1-04	Amend(T)	1-1-04	436-050-0210	1-1-04	Amend	1-1-04
436-010-0230	1-1-04	Amend(T)	1-1-04	436-050-0220	1-1-04	Amend	1-1-04
436-010-0240	1-1-04	Amend(T)	1-1-04	436-050-0260	1-1-04	Amend	1-1-04
436-010-0250	1-1-04	Amend(T)	1-1-04	436-050-0270	1-1-04	Amend	1-1-04
436-010-0265	1-1-04	Amend(T)	1-1-04	436-050-0280	1-1-04	Amend	1-1-04
436-010-0270	1-1-04	Amend(T)	1-1-04	436-050-0290	1-1-04	Amend	1-1-04
436-010-0275	1-1-04	Amend(T)	1-1-04	436-050-0400	1-1-04	Amend	1-1-04
436-010-0280	1-1-04	Amend(T)	1-1-04	436-050-0440	1-1-04	Amend	1-1-04
436-010-0340	1-1-04	Amend(T)	1-1-04	436-050-0480	1-1-04	Adopt	1-1-04
436-015-0008	1-1-04	Amend(T)	1-1-04	436-055-0008	1-1-04	Amend	1-1-04
436-015-0030	1-1-04	Amend(T)	1-1-04	436-060-0005	1-1-04	Amend(T)	1-1-04
436-015-0050	1-1-04	Amend(T)	1-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-015-0060	1-1-04	Amend(T)	1-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-015-0070	1-1-04	Amend(T)	1-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-015-0090	1-1-04	Amend(T)	1-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-030-0003	1-1-04	Amend(T)	1-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-030-0005	1-1-04	Amend(T)	1-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-030-0007	1-1-04	Amend(T)	1-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-030-0009	1-1-04	Amend(T)	1-1-04	436-060-0035	1-1-04	Amend(T)	1-1-04
436-030-0010	1-1-04	Amend(T)	1-1-04	436-060-0035(T)	1-1-04	Suspend	1-1-04
436-030-0034	1-1-04	Amend(T)	1-1-04	436-060-0095	1-1-04	Amend(T)	1-1-04
436-030-0035	1-1-04	Amend(T)	1-1-04	436-060-0105	1-1-04	Amend(T)	1-1-04
436-030-0115	1-1-04	Amend(T)	1-1-04	436-060-0140	1-1-04	Amend(T)	1-1-04
436-030-0125	1-1-04	Amend(T)	1-1-04	436-060-0150	1-1-04	Amend(T)	1-1-04
436-030-0135	1-1-04	Amend(T)	1-1-04	436-070-0008	1-1-04	Amend	1-1-04
436-030-0145	1-1-04	Amend(T)	1-1-04	436-075-0008	1-1-04	Amend	1-1-04
436-030-0165	1-1-04	Amend(T)	1-1-04	436-080-0001	1-1-04	Amend	1-1-04
436-030-0185	1-1-04	Amend(T)	1-1-04	436-080-0002	1-1-04	Amend	1-1-04
436-045-0008	1-1-04	Amend	1-1-04	436-080-0003	1-1-04	Amend	1-1-04
436-050-0003	1-1-04	Amend	1-1-04	436-080-0005	1-1-04	Amend	1-1-04
436-050-0005	1-1-04	Amend	1-1-04	436-080-0006	1-1-04	Amend	1-1-04
436-050-0006	1-1-04	Amend	1-1-04	436-080-0010	1-1-04	Amend	1-1-04
436-050-0008	1-1-04	Amend	1-1-04	436-080-0020	1-1-04	Amend	1-1-04
436-050-0020	1-1-04	Repeal	1-1-04	436-080-0030	1-1-04	Amend	1-1-04
436-050-0040	1-1-04	Amend	1-1-04	436-080-0040	1-1-04	Amend	1-1-04
436-050-0050	1-1-04	Amend	1-1-04	436-080-0050	1-1-04	Repeal	1-1-04
436-050-0055	1-1-04	Amend	1-1-04	436-080-0060	1-1-04	Amend	1-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-080-0065	1-1-04	Amend	1-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-080-0070	1-1-04	Amend	1-1-04
436-050-0090	1-1-04	Amend	1-1-04	436-080-0080	1-1-04	Amend	1-1-04
436-050-0100	1-1-04	Amend	1-1-04	436-085-0008	1-1-04	Amend	1-1-04
436-050-0110	1-1-04	Amend	1-1-04	436-120-0008	1-1-04	Amend(T)	1-1-04
436-050-0120	1-1-04	Amend	1-1-04	436-150-0008	1-1-04	Amend	1-1-04
436-050-0150	1-1-04	Amend	1-1-04	436-160-0003	1-1-04	Amend	1-1-04
436-050-0150(T)	1-1-04	Repeal	1-1-04	436-160-0310	1-1-04	Amend	1-1-04
436-050-0160	1-1-04	Amend	1-1-04	436-160-0320	1-1-04	Amend	1-1-04
436-050-0160(T)	1-1-04	Repeal	1-1-04	436-160-0340	1-1-04	Amend	1-1-04
436-050-0165	1-1-04	Adopt	1-1-04	436-160-0350	1-1-04	Amend	1-1-04
436-050-0165(T)	1-1-04	Repeal	1-1-04	436-160-0360	1-1-04	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
437-001-0015	11-26-03	Amend	1-1-04	441-175-0085	11-26-03	Amend(T)	1-1-04
437-001-0096	11-26-03	Amend	1-1-04	441-175-0100	11-26-03	Amend(T)	1-1-04
437-001-0171	11-26-03	Amend	1-1-04	441-175-0120	11-26-03	Amend(T)	1-1-04
437-001-0203	11-26-03	Amend	1-1-04	441-175-0130	11-26-03	Amend(T)	1-1-04
437-001-0265	11-26-03	Amend	1-1-04	441-175-0130	1-1-04	Amend	2-1-04
437-001-0270	11-26-03	Amend	1-1-04	441-175-0160	11-26-03	Amend(T)	1-1-04
437-001-0430	11-26-03	Amend	1-1-04	441-175-0165	11-26-03	Amend(T)	1-1-04
437-001-0700	11-26-03	Amend	1-1-04	441-175-0171	11-26-03	Amend(T)	1-1-04
437-001-0765	11-26-03	Amend	1-1-04	441-195-0035	1-1-04	Repeal	2-1-04
437-002-0220	12-5-03	Amend	1-1-04	441-730-0030	1-1-04	Amend	2-1-04
437-003-0001	12-5-03	Amend	1-1-04	441-740-0030	1-1-04	Adopt	2-1-04
437-003-0001	1-1-04	Amend	2-1-04	441-810-0200	1-1-04	Adopt	2-1-04
437-003-0754	1-1-04	Repeal	2-1-04	441-810-0210	1-1-04	Adopt	2-1-04
437-003-1754	1-1-04	Adopt	2-1-04	441-810-0220	1-1-04	Adopt	2-1-04
437-003-1760	1-1-04	Repeal	2-1-04	441-810-0230	1-1-04	Adopt	2-1-04
438-006-0064	1-1-04	Adopt	1-1-04	441-810-0240	1-1-04	Adopt	2-1-04
438-015-0110	1-1-04	Adopt	1-1-04	441-810-0250	1-1-04	Adopt	2-1-04
440-020-0010	1-1-04	Adopt	2-1-04	441-810-0260	1-1-04	Adopt	2-1-04
440-020-0015	1-1-04	Adopt	2-1-04	441-860-0020	1-1-04	Amend	2-1-04
440-055-0000	1-1-04	Repeal	2-1-04	441-860-0050	1-1-04	Amend	2-1-04
440-055-0005	1-1-04	Repeal	2-1-04	441-880-0050	1-1-04	Adopt	2-1-04
440-055-0008	1-1-04	Adopt	2-1-04	445-050-0005	2-15-04	Amend	2-1-04
440-100-0010	1-1-04	Adopt	2-1-04	445-050-0020	2-15-04	Amend	2-1-04
441-001-0005	1-1-04	Adopt	2-1-04	445-050-0030	2-15-04	Amend	2-1-04
441-001-0010	1-1-04	Adopt	2-1-04	445-050-0040	2-15-04	Amend	2-1-04
441-001-0020	1-1-04	Adopt	2-1-04	445-050-0050	2-15-04	Amend	2-1-04
441-001-0030	1-1-04	Adopt	2-1-04	445-050-0060	2-15-04	Amend	2-1-04
441-001-0040	1-1-04	Adopt	2-1-04	445-050-0080	2-15-04	Amend	2-1-04
441-001-0050	1-1-04	Adopt	2-1-04	445-050-0090	2-15-04	Amend	2-1-04
441-002-0005	1-1-04	Adopt	2-1-04	445-050-0155	2-15-04	Amend	2-1-04
441-002-0010	1-1-04	Adopt	2-1-04	459-005-0001	11-20-03	Amend	1-1-04
441-002-0020	1-1-04	Adopt	2-1-04	459-005-0001	12-15-03	Amend	1-1-04
441-002-0030	1-1-04	Adopt	2-1-04	459-005-0001(T)	11-20-03	Repeal	1-1-04
441-002-0040	1-1-04	Adopt	2-1-04	459-005-0250	1-1-04	Adopt	1-1-04
441-035-0045	11-26-03	Amend(T)	1-1-04	459-007-0001	12-15-03	Amend	1-1-04
441-049-1001	11-26-03	Adopt(T)	1-1-04	459-007-0001(T)	12-15-03	Repeal	1-1-04
441-049-1021	11-26-03	Amend(T)	1-1-04	459-007-0003	12-15-03	Adopt	1-1-04
441-049-1031	11-26-03	Amend(T)	1-1-04	459-007-0040	12-15-03	Amend	1-1-04
441-049-1041	11-26-03	Amend(T)	1-1-04	459-007-0040(T)	12-15-03	Repeal	1-1-04
441-049-1051	11-26-03	Amend(T)	1-1-04	459-007-0050	12-15-03	Amend	1-1-04
441-065-0001	11-26-03	Adopt(T)	1-1-04	459-007-0050(T)	12-15-03	Repeal	1-1-04
441-065-0015	11-26-03	Amend(T)	1-1-04	459-007-0060	12-15-03	Amend	1-1-04
441-065-0020	11-26-03	Amend(T)	1-1-04	459-007-0060(T)	12-15-03	Repeal	1-1-04
441-065-0035	11-26-03	Amend(T)	1-1-04	459-007-0070	4-1-04	Amend	1-1-04
441-065-0170	11-26-03	Amend(T)	1-1-04	459-007-0080	4-1-04	Amend	1-1-04
441-065-0180	11-26-03	Amend(T)	1-1-04	459-007-0090	4-1-04	Amend	1-1-04
441-065-0270	11-26-03	Amend(T)	1-1-04	459-007-0095	12-15-03	Adopt	1-1-04
441-075-0020	11-26-03	Amend(T)	1-1-04	459-007-0100	12-15-03	Repeal	1-1-04
441-095-0030	11-26-03	Amend(T)	1-1-04	459-009-0100	1-1-04	Amend	2-1-04
441-175-0002	11-26-03	Adopt(T)	1-1-04	459-009-0110	1-1-04	Repeal	2-1-04
441-175-0010	1-1-04	Amend	2-1-04	459-013-0300	12-15-03	Adopt	1-1-04
441-175-0015	11-26-03	Amend(T)	1-1-04	459-017-0060	12-15-03	Amend(T)	1-1-04
441-175-0035	1-1-04	Repeal	2-1-04	459-035-0050	1-1-04	Amend	1-1-04
441-175-0055	1-1-04	Amend	2-1-04	459-045-0001	11-20-03	Amend	1-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	459-045-0001(T)	11-20-03	Repeal	1-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	459-060-0001	12-15-03	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
459-060-0010	12-15-03	Amend	1-1-04	461-190-0161	1-1-04	Amend	2-1-04
459-060-0020	12-15-03	Amend	1-1-04	461-190-0191	1-1-04	Repeal	2-1-04
459-070-0100	1-1-04	Adopt	2-1-04	461-190-0211	1-1-04	Amend	2-1-04
459-070-0110	1-1-04	Adopt	2-1-04	461-190-0360	1-1-04	Amend	2-1-04
459-075-0030	1-1-04	Adopt	2-1-04	461-193-0560	1-1-04	Amend	2-1-04
459-080-0010	1-1-04	Adopt	1-1-04	461-195-0501	1-1-04	Amend	2-1-04
459-080-0200	1-1-04	Adopt(T)	1-1-04	461-195-0561	1-1-04	Amend	2-1-04
459-080-0500	1-1-04	Adopt	1-1-04	471-010-0050	1-4-04	Amend	2-1-04
461-025-0311	1-1-04	Amend	2-1-04	471-010-0051	1-4-04	Amend	2-1-04
461-110-0330	1-1-04	Amend	2-1-04	471-010-0054	1-4-04	Amend	2-1-04
461-110-0350	12-17-03	Amend(T)	2-1-04	471-010-0057	1-4-04	Adopt	2-1-04
461-115-0015	1-1-04	Amend	2-1-04	471-012-0010	12-14-03	Amend	1-1-04
461-115-0705	1-1-04	Amend	2-1-04	471-012-0015	12-14-03	Amend	1-1-04
461-120-0120	1-1-04	Amend	2-1-04	471-012-0020	12-14-03	Amend	1-1-04
461-120-0125	1-1-04	Amend(T)	2-1-04	471-015-0005	12-14-03	Amend	1-1-04
461-120-0125(T)	1-1-04	Suspend	2-1-04	471-015-0010	12-14-03	Amend	1-1-04
461-120-0340	1-1-04	Amend	2-1-04	471-015-0015	12-14-03	Amend	1-1-04
461-120-0345	1-1-04	Amend	2-1-04	471-015-0020	12-14-03	Amend	1-1-04
461-120-0345	1-1-04	Amend	2-1-04	471-030-0040	12-14-03	Amend	1-1-04
461-135-0010	1-1-04	Amend	2-1-04	471-030-0045	12-14-03	Amend	1-1-04
461-135-0180	1-1-04	Repeal	2-1-04	471-030-0125	1-4-04	Adopt	2-1-04
461-135-0301	12-1-03	Amend(T)	1-1-04	471-030-0130	1-4-04	Repeal	2-1-04
461-135-0400	1-1-04	Amend	2-1-04	471-030-0135	1-4-04	Repeal	2-1-04
461-135-0401	1-1-04	Amend	2-1-04	471-030-0140	1-4-04	Repeal	2-1-04
461-135-0700	1-1-04	Amend(T)	2-1-04	471-030-0145	1-4-04	Repeal	2-1-04
461-135-0700(T)	1-1-04	Suspend	2-1-04	471-031-0076	12-14-03	Amend	1-1-04
461-135-0730	1-1-04	Amend	2-1-04	471-031-0077	12-14-03	Adopt	1-1-04
461-135-0780	1-1-04	Amend	2-1-04	471-031-0140	12-14-03	Amend	1-1-04
461-135-0830	1-1-04	Amend	2-1-04	471-031-0141	12-14-03	Amend	1-1-04
461-135-0832	1-1-04	Amend	2-1-04	471-031-0142	12-14-03	Adopt	1-1-04
461-135-0847	1-1-04	Adopt	2-1-04	471-060-0005	1-4-04	Amend	2-1-04
461-135-1120	1-1-04	Amend	2-1-04	543-050-0000	1-1-04	Repeal	1-1-04
461-135-1130	12-1-03	Amend(T)	1-1-04	543-050-0020	1-1-04	Repeal	1-1-04
461-135-1130	1-1-04	Amend	2-1-04	543-050-0030	1-1-04	Repeal	1-1-04
461-135-1130	1-1-04	Amend	2-1-04	543-050-0040	1-1-04	Repeal	1-1-04
461-135-1130(T)	12-1-03	Suspend	1-1-04	543-050-0050	1-1-04	Repeal	1-1-04
461-155-0020	1-1-04	Amend	2-1-04	543-060-0000	1-1-04	Adopt	1-1-04
461-155-0030	1-1-04	Amend	2-1-04	543-060-0010	1-1-04	Adopt	1-1-04
461-155-0035	1-1-04	Amend	2-1-04	543-060-0020	1-1-04	Adopt	1-1-04
461-155-0150	1-1-04	Amend	2-1-04	543-060-0030	1-1-04	Adopt	1-1-04
461-155-0150	1-1-04	Amend	2-1-04	543-060-0040	1-1-04	Adopt	1-1-04
461-155-0250	1-1-04	Amend	2-1-04	543-060-0060	1-1-04	Adopt	1-1-04
461-155-0270	1-1-04	Amend	2-1-04	577-060-0020	11-18-03	Amend(T)	1-1-04
461-155-0300	1-1-04	Amend	2-1-04	580-010-0029	12-3-03	Amend	1-1-04
461-155-0526	1-1-04	Amend	2-1-04	580-010-0030	12-3-03	Amend	1-1-04
461-155-0526	1-1-04	Amend	2-1-04	580-010-0031	12-3-03	Amend	1-1-04
461-155-0680	1-1-04	Amend	2-1-04	580-010-0033	12-3-03	Amend	1-1-04
461-160-0580	1-1-04	Amend	2-1-04	580-010-0035	12-3-03	Amend	1-1-04
461-160-0620	1-1-04	Amend	2-1-04	580-010-0037	12-3-03	Amend	1-1-04
461-165-0030	1-1-04	Amend	2-1-04	580-010-0040	12-3-03	Amend	1-1-04
461-170-0010	1-1-04	Amend	2-1-04	580-010-0041	12-3-03	Amend	1-1-04
461-175-0200	1-1-04	Amend	2-1-04	580-010-0045	12-3-03	Amend	1-1-04
461-180-0070	1-1-04	Amend	2-1-04	580-020-0006	12-1-03	Adopt(T)	1-1-04
461-180-0105	12-1-03	Amend(T)	1-1-04	580-021-0044	12-1-03	Adopt(T)	1-1-04
461-180-0105	1-1-04	Amend	2-1-04	580-040-0035	12-24-03	Amend	2-1-04
461-190-0110	1-1-04	Amend	2-1-04	581-015-0075	1-15-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
581-015-0126	1-15-04	Amend	2-1-04	607-030-0020	11-26-03	Adopt	1-1-04
581-015-0900	1-15-04	Amend	2-1-04	607-030-0030	11-26-03	Adopt	1-1-04
581-015-0935	1-15-04	Amend	2-1-04	607-030-0040	11-26-03	Adopt	1-1-04
581-015-0938	1-15-04	Amend	2-1-04	608-010-0015	1-2-04	Amend	2-1-04
581-015-0940	1-15-04	Amend	2-1-04	608-010-0020	1-2-04	Amend	2-1-04
581-015-0960	1-15-04	Amend	2-1-04	608-030-0010	1-2-04	Adopt	2-1-04
581-015-0964	1-15-04	Amend	2-1-04	608-030-0020	1-2-04	Adopt	2-1-04
581-015-0968	1-15-04	Amend	2-1-04	608-030-0030	1-2-04	Adopt	2-1-04
581-015-0970	1-15-04	Amend	2-1-04	608-030-0040	1-2-04	Adopt	2-1-04
581-015-0972	1-15-04	Amend	2-1-04	611-030-0010	1-15-04	Adopt	2-1-04
581-015-0980	1-15-04	Amend	2-1-04	611-030-0020	1-15-04	Adopt	2-1-04
581-015-0990	1-15-04	Amend	2-1-04	611-030-0030	1-15-04	Adopt	2-1-04
581-021-0023	1-15-04	Adopt	2-1-04	611-030-0040	1-15-04	Adopt	2-1-04
581-022-1730	1-15-04	Amend	2-1-04	617-010-0090	1-16-04	Adopt	2-1-04
581-045-0001	1-1-04	Amend	2-1-04	617-030-0010	1-16-04	Adopt	2-1-04
581-045-0012	1-1-04	Amend	2-1-04	617-030-0020	1-16-04	Adopt	2-1-04
581-045-0018	1-1-04	Amend	2-1-04	617-030-0030	1-16-04	Adopt	2-1-04
581-045-0019	1-1-04	Amend	2-1-04	617-030-0040	1-16-04	Adopt	2-1-04
581-045-0023	1-1-04	Amend	2-1-04	617-030-0050	1-14-04	Adopt	2-1-04
581-045-0026	1-1-04	Amend	2-1-04	620-010-0010	1-14-04	Adopt	2-1-04
581-045-0032	1-1-04	Amend	2-1-04	620-030-0020	1-14-04	Adopt	2-1-04
581-045-0065	1-1-04	Amend	2-1-04	620-030-0030	1-14-04	Adopt	2-1-04
581-045-0068	1-1-04	Amend	2-1-04	620-030-0040	1-14-04	Adopt	2-1-04
581-045-0200	1-1-04	Amend	2-1-04	623-030-0010	12-8-03	Adopt	1-1-04
582-010-0005	12-31-03	Amend	2-1-04	623-030-0020	12-8-03	Adopt	1-1-04
582-010-0010	12-31-03	Amend	2-1-04	623-030-0030	12-8-03	Adopt	1-1-04
582-010-0015	12-31-03	Amend	2-1-04	624-010-0000	1-16-04	Amend	2-1-04
582-010-0020	12-31-03	Amend	2-1-04	624-010-0020	1-16-04	Amend	2-1-04
582-010-0025	12-31-03	Amend	2-1-04	624-010-0030	1-16-04	Amend	2-1-04
582-010-0030	12-31-03	Adopt	2-1-04	624-010-0050	1-16-04	Adopt	2-1-04
582-070-0020	12-31-03	Amend	2-1-04	624-010-0060	1-16-04	Adopt	2-1-04
582-080-0020	12-31-03	Amend	2-1-04	624-030-0010	1-16-04	Adopt	2-1-04
582-085-0020	12-31-03	Amend	2-1-04	624-030-0020	1-16-04	Adopt	2-1-04
583-030-0021	1-14-04	Amend	2-1-04	624-030-0030	1-16-04	Adopt	2-1-04
583-030-0030	1-14-04	Amend	2-1-04	624-030-0040	1-16-04	Adopt	2-1-04
583-030-0045	1-14-04	Amend	2-1-04	635-001-0105	1-1-04	Amend	1-1-04
589-020-0220	11-20-03	Adopt(T)	1-1-04	635-004-0005	1-1-04	Amend	1-1-04
603-057-0006	12-23-03	Amend	2-1-04	635-004-0018	1-1-04	Amend	1-1-04
603-057-0006(T)	12-23-03	Repeal	2-1-04	635-004-0027	1-1-04	Amend(T)	1-1-04
603-095-3600	1-12-04	Adopt	2-1-04	635-004-0036	1-1-04	Amend	1-1-04
603-095-3620	1-12-04	Adopt	2-1-04	635-005-0045	12-1-03	Amend(T)	1-1-04
603-095-3640	1-12-04	Adopt	2-1-04	635-005-0048	12-1-03	Adopt(T)	1-1-04
603-095-3660	1-12-04	Adopt	2-1-04	635-005-0205	11-21-03	Amend(T)	1-1-04
604-030-0010	11-21-03	Adopt	1-1-04	635-006-0140	1-1-04	Amend	1-1-04
604-030-0020	11-21-03	Adopt	1-1-04	635-006-0150	1-1-04	Amend	1-1-04
604-030-0030	11-21-03	Adopt	1-1-04	635-006-0210	12-1-03	Amend(T)	1-1-04
604-030-0040	11-21-03	Adopt	1-1-04	635-006-0232	2-1-04	Amend	2-1-04
605-030-0010	1-15-04	Adopt	2-1-04	635-006-0850	1-1-04	Amend	1-1-04
605-030-0020	1-15-04	Adopt	2-1-04	635-011-0100	1-1-04	Amend	1-1-04
605-030-0030	1-15-04	Adopt	2-1-04	635-011-0101	1-1-04	Amend	1-1-04
605-030-0040	1-15-04	Adopt	2-1-04	635-013-0003	1-1-04	Amend	1-1-04
606-010-0025	1-15-04	Amend	2-1-04	635-013-0004	1-1-04	Amend	1-1-04
606-030-0010	1-15-04	Adopt	2-1-04	635-014-0080	1-1-04	Amend	1-1-04
606-030-0020	1-15-04	Adopt	2-1-04	635-014-0090	12-11-03	Amend(T)	1-1-04
606-030-0040	1-15-04	Adopt	2-1-04	635-014-0090	1-1-04	Amend	1-1-04
607-030-0010	11-26-03	Adopt	1-1-04	635-014-0090	1-1-04	Amend(T)	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-014-0090(T)	12-11-03	Suspend	1-1-04	635-069-0000	2-2-04	Amend	1-1-04
635-014-0090(T)	1-1-04	Repeal	1-1-04	635-070-0000	12-24-03	Amend(T)	2-1-04
635-016-0080	1-1-04	Amend	1-1-04	635-070-0000	4-1-04	Amend	1-1-04
635-016-0090	1-1-04	Amend	1-1-04	635-070-0010	12-24-03	Amend(T)	2-1-04
635-017-0080	1-1-04	Amend	1-1-04	635-071-0000	1-1-04	Amend	1-1-04
635-017-0090	1-1-04	Amend	1-1-04	635-071-0000	1-13-04	Amend(T)	2-1-04
635-018-0080	1-1-04	Amend	1-1-04	635-071-0005	1-13-04	Amend(T)	2-1-04
635-018-0090	1-1-04	Amend	1-1-04	635-072-0000	1-1-04	Amend	1-1-04
635-019-0080	1-1-04	Amend	1-1-04	635-073-0000	12-24-03	Amend(T)	2-1-04
635-019-0090	1-1-04	Amend	1-1-04	635-073-0000	2-2-04	Amend	1-1-04
635-021-0080	1-1-04	Amend	1-1-04	635-073-0060	12-24-03	Amend(T)	2-1-04
635-021-0090	1-1-04	Amend	1-1-04	635-073-0070	1-1-04	Amend	1-1-04
635-023-0080	1-1-04	Amend	1-1-04	635-073-0090	1-1-04	Amend	1-1-04
635-023-0090	1-1-04	Amend	1-1-04	635-075-0005	1-1-04	Amend	1-1-04
635-039-0080	1-1-04	Amend	1-1-04	635-075-0015	1-1-04	Amend	1-1-04
635-039-0090	11-21-03	Amend(T)	1-1-04	635-075-0020	1-1-04	Amend	1-1-04
635-039-0090	1-1-04	Amend	1-1-04	635-075-0029	1-1-04	Amend	1-1-04
635-039-0090	1-1-04	Amend	1-1-04	635-078-0001	1-1-04	Amend	1-1-04
635-04-0033	1-1-04	Amend	1-1-04	635-078-0005	1-1-04	Amend	1-1-04
635-041-0060	12-1-03	Amend(T)	1-1-04	635-078-0008	1-1-04	Amend	1-1-04
635-041-0065	1-1-04	Amend(T)	2-1-04	635-080-0030	1-1-04	Amend	1-1-04
635-042-0130	1-1-04	Amend(T)	2-1-04	635-080-0031	1-1-04	Amend	1-1-04
635-042-0135	1-1-04	Amend(T)	2-1-04	635-500-1820	12-15-03	Amend	1-1-04
635-045-0000	1-1-04	Amend	1-1-04	635-500-1830	12-15-03	Amend	1-1-04
635-045-0002	1-1-04	Amend	1-1-04	635-500-1850	12-15-03	Amend	1-1-04
635-053-0000	1-16-04	Amend(T)	2-1-04	635-500-1920	12-15-03	Amend	1-1-04
635-053-0015	1-16-04	Amend(T)	2-1-04	635-500-1930	12-15-03	Amend	1-1-04
635-053-0025	1-16-04	Amend(T)	2-1-04	635-500-3120	12-15-03	Amend	1-1-04
635-060-0000	1-1-04	Amend	1-1-04	635-500-6000	12-15-03	Adopt	1-1-04
635-060-0005	1-1-04	Amend	1-1-04	635-500-6010	12-15-03	Adopt	1-1-04
635-060-0008	1-1-04	Amend	1-1-04	635-500-6020	12-15-03	Adopt	1-1-04
635-060-0030	1-1-04	Amend	1-1-04	635-500-6030	12-15-03	Adopt	1-1-04
635-060-0046	1-1-04	Amend	1-1-04	635-500-6040	12-15-03	Adopt	1-1-04
635-060-0055	4-1-04	Amend	1-1-04	635-500-6050	12-15-03	Adopt	1-1-04
635-065-0001	1-1-04	Amend	1-1-04	635-500-6060	12-15-03	Adopt	1-1-04
635-065-0015	1-1-04	Amend	1-1-04	641-030-0010	1-15-04	Adopt	1-1-04
635-065-0401	1-1-04	Amend	1-1-04	641-030-0020	1-15-04	Adopt	1-1-04
635-065-0501	1-1-04	Amend	1-1-04	641-030-0030	1-15-04	Adopt	1-1-04
635-065-0625	1-1-04	Amend	1-1-04	642-010-0020	1-15-04	Amend	1-1-04
635-065-0705	1-1-04	Amend	1-1-04	642-030-0010	1-15-04	Adopt	1-1-04
635-065-0720	1-1-04	Amend	1-1-04	642-030-0020	1-15-04	Adopt	1-1-04
635-065-0740	1-1-04	Amend	1-1-04	642-030-0030	1-15-04	Adopt	1-1-04
635-065-0760	11-25-03	Amend(T)	1-1-04	644-010-0005	1-8-04	Amend	2-1-04
635-065-0760	6-16-04	Amend	1-1-04	644-010-0010	1-8-04	Amend	2-1-04
635-065-0765	1-1-04	Amend	1-1-04	644-010-0015	1-8-04	Amend	2-1-04
635-066-0000	1-1-04	Amend	1-1-04	644-010-0020	1-8-04	Amend	2-1-04
635-066-0010	1-1-04	Amend	1-1-04	644-010-0025	1-8-04	Amend	2-1-04
635-067-0000	1-1-04	Amend	1-1-04	644-030-0010	1-8-04	Adopt	2-1-04
635-067-0015	1-1-04	Amend	1-1-04	644-030-0020	1-8-04	Adopt	2-1-04
635-067-0024	1-1-04	Amend	1-1-04	644-030-0030	1-8-04	Adopt	2-1-04
635-067-0028	1-1-04	Adopt	1-1-04	644-030-0040	1-8-04	Adopt	2-1-04
635-067-0029	1-1-04	Adopt	1-1-04	645-030-0010	1-16-04	Adopt	2-1-04
635-067-0032	1-1-04	Amend	1-1-04	645-030-0020	1-16-04	Adopt	2-1-04
635-067-0034	1-1-04	Amend	1-1-04	645-030-0030	1-16-04	Adopt	2-1-04
635-067-0041	1-1-04	Adopt	1-1-04	645-030-0040	1-16-04	Adopt	2-1-04
635-068-0000	1-19-04	Amend	1-1-04	646-010-0030	1-16-04	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
646-030-0010	1-16-04	Adopt	2-1-04	731-001-0000	12-11-03	Amend	1-1-04
646-030-0020	1-16-04	Adopt	2-1-04	734-060-0025	1-1-04	Amend	1-1-04
646-030-0030	1-16-04	Adopt	2-1-04	735-010-0070	1-1-04	Amend	1-1-04
646-030-0040	1-16-04	Adopt	2-1-04	735-018-0020	12-15-03	Amend	1-1-04
647-010-0020	1-16-04	Amend	2-1-04	735-018-0070	12-15-03	Amend	1-1-04
647-015-0010	1-16-04	Adopt	2-1-04	735-018-0080	12-15-03	Amend	1-1-04
647-015-0020	1-16-04	Adopt	2-1-04	735-018-0110	12-15-03	Amend	1-1-04
647-015-0030	1-16-04	Adopt	2-1-04	735-018-0120	1-1-04	Adopt(T)	1-1-04
655-015-0010	1-16-04	Adopt	2-1-04	735-020-0070	1-1-04	Adopt(T)	1-1-04
655-015-0020	1-16-04	Adopt	2-1-04	735-020-0080	1-1-04	Adopt(T)	1-1-04
655-015-0030	1-16-04	Adopt	2-1-04	735-024-0010	1-1-04	Amend(T)	1-1-04
656-030-0010	1-1-04	Adopt	1-1-04	735-024-0020	1-1-04	Amend(T)	1-1-04
656-030-0020	1-1-04	Adopt	1-1-04	735-024-0045	1-1-04	Adopt(T)	1-1-04
656-030-0030	1-1-04	Adopt	1-1-04	735-032-0010	1-1-04	Amend(T)	1-1-04
656-030-0040	1-1-04	Adopt	1-1-04	735-034-0010	1-1-04	Amend(T)	1-1-04
657-030-0010	1-15-04	Adopt	1-1-04	735-040-0050	1-1-04	Amend(T)	1-1-04
657-030-0020	1-15-04	Adopt	1-1-04	735-040-0055	1-1-04	Amend(T)	1-1-04
657-030-0030	1-15-04	Adopt	1-1-04	735-040-0061	1-1-04	Amend(T)	1-1-04
658-010-0005	12-4-03	Amend	1-1-04	735-040-0080	1-1-04	Amend(T)	1-1-04
658-010-0006	12-4-03	Amend	1-1-04	735-040-0095	1-1-04	Amend(T)	1-1-04
658-010-0007	12-4-03	Adopt	1-1-04	735-040-0097	1-1-04	Amend(T)	1-1-04
658-030-0010	12-4-03	Adopt	1-1-04	735-040-0100	1-1-04	Amend(T)	1-1-04
658-030-0020	12-4-03	Adopt	1-1-04	735-050-0060	1-1-04	Amend	1-1-04
658-030-0030	12-4-03	Adopt	1-1-04	735-050-0062	1-1-04	Amend	1-1-04
664-010-0020	1-15-04	Amend	1-1-04	735-050-0064	1-1-04	Amend	1-1-04
664-015-0010	1-15-04	Adopt	1-1-04	735-050-0070	1-1-04	Amend	1-1-04
664-015-0020	1-15-04	Adopt	1-1-04	735-050-0080	1-1-04	Amend	1-1-04
664-015-0030	1-15-04	Adopt	1-1-04	735-050-0120	1-1-04	Amend	1-1-04
668-010-0010	1-15-04	Amend	2-1-04	735-060-0000	11-18-03	Amend	1-1-04
668-030-0010	1-15-04	Adopt	2-1-04	735-060-0015	11-18-03	Am. & Ren.	1-1-04
668-030-0020	1-15-04	Adopt	2-1-04	735-060-0017	11-18-03	Am. & Ren.	1-1-04
668-030-0030	1-15-04	Adopt	2-1-04	735-060-0030	11-18-03	Amend	1-1-04
668-030-0040	1-15-04	Adopt	2-1-04	735-060-0040	11-18-03	Amend	1-1-04
669-010-0015	1-13-04	Amend	2-1-04	735-060-0050	11-18-03	Amend	1-1-04
669-010-0020	1-13-04	Amend	2-1-04	735-060-0050(10), (11)&(12)		11-18-03	Am. & Ren.
669-010-0025	1-13-04	Amend	2-1-04	1-1-04			
669-010-0030	1-13-04	Amend	2-1-04	735-060-0050(9)&(13)	11-18-03	Am. & Ren.	1-1-04
669-010-0040	1-13-04	Amend	2-1-04	735-060-0060	11-18-03	Amend	1-1-04
669-010-0050	1-13-04	Adopt	2-1-04	735-060-0065	11-18-03	Adopt	1-1-04
669-030-0010	1-13-04	Adopt	2-1-04	735-060-0070	11-18-03	Repeal	1-1-04
669-030-0020	1-13-04	Adopt	2-1-04	735-060-0080	11-18-03	Repeal	1-1-04
669-030-0030	1-13-04	Adopt	2-1-04	735-060-0090	11-18-03	Amend	1-1-04
669-030-0040	1-13-04	Adopt	2-1-04	735-060-0095	11-18-03	Amend	1-1-04
670-010-0020	1-15-04	Amend	2-1-04	735-060-0100	11-18-03	Amend	1-1-04
670-030-0010	1-15-04	Adopt	2-1-04	735-060-0100(8), (9) & (10)	11-18-03	Am. & Ren.	1-1-04
670-030-0020	1-15-04	Adopt	2-1-04	735-060-0110	11-18-03	Amend	1-1-04
670-030-0030	1-15-04	Adopt	2-1-04	735-060-0115	11-18-03	Adopt	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0120	11-18-03	Amend	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0130	11-18-03	Amend	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0140	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0150	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0160	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0170	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-061-0010	1-15-04	Repeal	2-1-04
690-502-0160	12-4-03	Amend	1-1-04	735-061-0020	1-15-04	Repeal	2-1-04
690-502-0210	12-4-03	Adopt	1-1-04	735-061-0030	1-15-04	Repeal	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
735-061-0040	1-15-04	Repeal	2-1-04	735-176-0020	1-15-04	Amend	2-1-04
735-061-0050	1-15-04	Repeal	2-1-04	735-176-0030	1-15-04	Amend	2-1-04
735-061-0060	1-15-04	Repeal	2-1-04	735-176-0040	1-15-04	Amend	2-1-04
735-061-0070	1-15-04	Repeal	2-1-04	736-001-0000	1-15-04	Amend	2-1-04
735-061-0080	1-15-04	Repeal	2-1-04	736-002-0020	1-15-04	Adopt	2-1-04
735-061-0090	1-15-04	Repeal	2-1-04	736-002-0030	1-15-04	Adopt	2-1-04
735-061-0100	1-15-04	Repeal	2-1-04	736-002-0040	1-15-04	Adopt	2-1-04
735-061-0110	1-15-04	Repeal	2-1-04	736-002-0060	1-15-04	Adopt	2-1-04
735-061-0120	1-15-04	Repeal	2-1-04	736-002-0070	1-15-04	Adopt	2-1-04
735-061-0130	1-15-04	Repeal	2-1-04	736-002-0080	1-15-04	Adopt	2-1-04
735-061-0140	1-15-04	Repeal	2-1-04	736-002-0090	1-15-04	Adopt	2-1-04
735-061-0150	1-15-04	Repeal	2-1-04	736-002-0100	1-15-04	Adopt	2-1-04
735-061-0160	1-15-04	Repeal	2-1-04	736-010-0022	1-15-04	Amend(T)	2-1-04
735-061-0170	1-15-04	Repeal	2-1-04	740-060-0030	1-1-04	Amend(T)	1-1-04
735-061-0180	1-15-04	Repeal	2-1-04	740-060-0050	1-1-04	Amend(T)	1-1-04
735-061-0190	1-15-04	Repeal	2-1-04	740-060-0055	1-1-04	Adopt(T)	1-1-04
735-061-0200	1-15-04	Repeal	2-1-04	740-100-0010	1-1-04	Amend	1-1-04
735-062-0005	1-1-04	Amend	1-1-04	740-100-0015	1-15-04	Adopt	2-1-04
735-062-0020	1-1-04	Amend	1-1-04	740-100-0060	1-1-04	Amend	1-1-04
735-062-0030	1-1-04	Amend(T)	1-1-04	740-100-0070	1-1-04	Amend	1-1-04
735-062-0075	1-1-04	Amend	1-1-04	740-100-0080	1-1-04	Amend	1-1-04
735-062-0095	1-1-04	Amend	1-1-04	740-100-0090	1-1-04	Amend	1-1-04
735-062-0110	1-1-04	Amend	1-1-04	740-110-0010	1-1-04	Amend	1-1-04
735-064-0020	1-1-04	Amend	1-1-04	740-115-0010	1-1-04	Repeal	1-1-04
735-064-0060	1-1-04	Amend	1-1-04	740-115-0020	1-1-04	Repeal	1-1-04
735-064-0220	1-1-04	Amend(T)	1-1-04	740-115-0030	1-1-04	Repeal	1-1-04
735-070-0130	1-1-04	Amend	1-1-04	740-115-0040	1-1-04	Repeal	1-1-04
735-080-0010	11-18-03	Amend	1-1-04	740-115-0050	1-1-04	Repeal	1-1-04
735-080-0030	11-18-03	Amend	1-1-04	740-115-0060	1-1-04	Repeal	1-1-04
735-116-0000	1-15-04	Amend	2-1-04	740-115-0070	1-1-04	Repeal	1-1-04
735-150-0040	1-1-04	Amend(T)	1-1-04	740-120-0010	1-1-04	Repeal	1-1-04
735-150-0070	1-1-04	Amend(T)	1-1-04	740-120-0020	1-1-04	Repeal	1-1-04
735-150-0250	12-15-03	Adopt(T)	1-1-04	740-120-0030	1-1-04	Repeal	1-1-04
735-150-0260	12-15-03	Adopt(T)	1-1-04	740-120-0040	1-1-04	Repeal	1-1-04
735-154-0005	1-1-04	Adopt(T)	1-1-04	740-125-0010	1-1-04	Repeal	1-1-04
735-170-0000	1-1-04	Amend	1-1-04	740-125-0020	1-1-04	Repeal	1-1-04
735-170-0010	1-1-04	Amend	1-1-04	740-125-0030	1-1-04	Repeal	1-1-04
735-170-0020	1-1-04	Amend	1-1-04	740-125-0040	1-1-04	Repeal	1-1-04
735-170-0030	1-1-04	Amend	1-1-04	740-130-0010	1-1-04	Repeal	1-1-04
735-170-0050	1-1-04	Amend	1-1-04	740-130-0020	1-1-04	Repeal	1-1-04
735-170-0060	1-1-04	Amend	1-1-04	740-130-0030	1-1-04	Repeal	1-1-04
735-170-0070	1-1-04	Amend	1-1-04	740-130-0040	1-1-04	Repeal	1-1-04
735-170-0090	1-1-04	Amend	1-1-04	740-130-0050	1-1-04	Repeal	1-1-04
735-170-0100	1-1-04	Amend	1-1-04	740-130-0060	1-1-04	Repeal	1-1-04
735-170-0110	1-1-04	Adopt	1-1-04	740-130-0070	1-1-04	Repeal	1-1-04
735-170-0120	1-1-04	Adopt	1-1-04	740-130-0080	1-1-04	Repeal	1-1-04
735-170-0140	1-1-04	Adopt	1-1-04	740-130-0090	1-1-04	Repeal	1-1-04
735-174-0000	1-1-04	Amend	1-1-04	740-135-0010	1-1-04	Repeal	1-1-04
735-174-0010	1-1-04	Amend	1-1-04	740-135-0020	1-1-04	Repeal	1-1-04
735-174-0020	1-1-04	Amend	1-1-04	740-135-0030	1-1-04	Repeal	1-1-04
735-174-0030	1-1-04	Amend	1-1-04	740-135-0040	1-1-04	Repeal	1-1-04
735-174-0040	1-1-04	Adopt(T)	1-1-04	740-140-0010	1-1-04	Repeal	1-1-04
735-176-0000	1-15-04	Amend	2-1-04	740-140-0020	1-1-04	Repeal	1-1-04
735-176-0010	1-15-04	Amend	2-1-04	740-140-0030	1-1-04	Repeal	1-1-04
735-176-0015	1-15-04	Adopt	2-1-04	740-140-0040	1-1-04	Repeal	1-1-04
735-176-0018	1-15-04	Adopt	2-1-04	740-140-0050	1-1-04	Repeal	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
740-140-0060	1-1-04	Repeal	1-1-04	801-040-0090	1-1-04	Amend	2-1-04
740-145-0010	1-1-04	Repeal	1-1-04	801-040-0100	1-1-04	Amend	2-1-04
740-145-0020	1-1-04	Repeal	1-1-04	801-040-0160	1-1-04	Amend	2-1-04
740-145-0030	1-1-04	Repeal	1-1-04	801-050-0080	1-1-04	Amend	2-1-04
740-145-0040	1-1-04	Repeal	1-1-04	808-002-0540	1-1-04	Amend(T)	2-1-04
740-145-0050	1-1-04	Repeal	1-1-04	808-003-0040	12-1-03	Amend(T)	1-1-04
740-145-0060	1-1-04	Repeal	1-1-04	808-004-0210	1-1-04	Adopt	2-1-04
740-150-0010	1-1-04	Repeal	1-1-04	808-008-0020	1-1-04	Amend(T)	2-1-04
740-150-0020	1-1-04	Repeal	1-1-04	808-008-0030	1-1-04	Amend(T)	2-1-04
740-150-0030	1-1-04	Repeal	1-1-04	808-008-0050	1-1-04	Adopt	2-1-04
740-150-0040	1-1-04	Repeal	1-1-04	808-008-0060	1-1-04	Amend(T)	2-1-04
740-150-0050	1-1-04	Repeal	1-1-04	808-008-0085	1-1-04	Amend(T)	2-1-04
740-155-0010	1-1-04	Repeal	1-1-04	808-008-0140	1-1-04	Amend(T)	2-1-04
740-155-0020	1-1-04	Repeal	1-1-04	808-008-0240	1-1-04	Suspend	2-1-04
740-155-0030	1-1-04	Repeal	1-1-04	808-008-0280	1-1-04	Amend(T)	2-1-04
740-155-0040	1-1-04	Repeal	1-1-04	808-008-0290	1-1-04	Adopt(T)	2-1-04
740-155-0050	1-1-04	Repeal	1-1-04	808-008-0400	1-1-04	Amend(T)	2-1-04
740-155-0060	1-1-04	Repeal	1-1-04	808-008-0420	1-1-04	Amend(T)	2-1-04
740-160-0010	1-1-04	Repeal	1-1-04	808-008-0425	1-1-04	Amend(T)	2-1-04
740-160-0020	1-1-04	Repeal	1-1-04	808-008-0430	1-1-04	Amend(T)	2-1-04
740-160-0030	1-1-04	Repeal	1-1-04	808-008-0440	1-1-04	Amend(T)	2-1-04
740-160-0040	1-1-04	Repeal	1-1-04	808-008-0460	1-1-04	Amend(T)	2-1-04
740-160-0050	1-1-04	Repeal	1-1-04	808-008-0500	1-1-04	Amend(T)	2-1-04
740-160-0060	1-1-04	Repeal	1-1-04	808-008-0510	1-1-04	Adopt(T)	2-1-04
740-160-0070	1-1-04	Repeal	1-1-04	808-008-0520	1-1-04	Adopt(T)	2-1-04
740-165-0010	1-1-04	Repeal	1-1-04	811-010-0085	12-11-03	Amend	1-1-04
740-165-0020	1-1-04	Repeal	1-1-04	811-010-0095	12-11-03	Amend	1-1-04
740-165-0030	1-1-04	Repeal	1-1-04	811-015-0010	12-11-03	Amend	1-1-04
740-165-0040	1-1-04	Repeal	1-1-04	811-035-0005	12-11-03	Amend	1-1-04
740-200-0010	1-1-04	Amend	1-1-04	811-035-0015	12-11-03	Amend	1-1-04
740-200-0020	1-1-04	Amend	1-1-04	812-001-0020	12-5-03	Amend	1-1-04
740-200-0040	1-1-04	Amend	1-1-04	812-001-0020	12-9-03	Amend(T)	1-1-04
740-300-0035	1-1-04	Adopt(T)	1-1-04	812-001-0020	1-1-04	Amend(T)	2-1-04
801-001-0005	1-1-04	Amend	2-1-04	812-001-0022	1-1-04	Adopt(T)	2-1-04
801-001-0010	1-1-04	Amend	2-1-04	812-002-0130	12-5-03	Adopt	1-1-04
801-001-0015	1-1-04	Amend	2-1-04	812-002-0200	12-5-03	Amend	1-1-04
801-001-0020	1-1-04	Amend	2-1-04	812-002-0240	12-5-03	Repeal	1-1-04
801-001-0035	1-1-04	Adopt	2-1-04	812-002-0240(T)	12-5-03	Repeal	1-1-04
801-001-0050	1-1-04	Adopt	2-1-04	812-002-0420	12-5-03	Amend	1-1-04
801-005-0010	1-1-04	Amend	2-1-04	812-002-0420(T)	12-5-03	Repeal	1-1-04
801-010-0010	1-1-04	Amend	2-1-04	812-002-0440	12-5-03	Amend	1-1-04
801-010-0045	1-1-04	Amend	2-1-04	812-002-0540	12-5-03	Amend	1-1-04
801-010-0050	1-1-04	Amend	2-1-04	812-002-0540(T)	12-5-03	Repeal	1-1-04
801-010-0060	1-1-04	Amend	2-1-04	812-003-0000	12-5-03	Amend	1-1-04
801-010-0075	1-1-04	Amend	2-1-04	812-003-0000(T)	12-5-03	Repeal	1-1-04
801-010-0080	1-1-04	Amend	2-1-04	812-003-0020	12-5-03	Amend	1-1-04
801-010-0085	1-1-04	Amend	2-1-04	812-003-0020(T)	12-5-03	Repeal	1-1-04
801-010-0110	1-1-04	Amend	2-1-04	812-003-0025	12-5-03	Amend	1-1-04
801-010-0115	1-1-04	Amend	2-1-04	812-003-0025(T)	12-5-03	Repeal	1-1-04
801-010-0125	1-1-04	Amend	2-1-04	812-004-0110	12-5-03	Adopt	1-1-04
801-010-0345	1-1-04	Amend	2-1-04	812-004-0110	1-1-04	Amend(T)	2-1-04
801-020-0700	1-1-04	Amend	2-1-04	812-004-0210	12-5-03	Adopt	1-1-04
801-030-0005	1-1-04	Amend	2-1-04	812-004-0250	1-1-04	Amend(T)	2-1-04
801-030-0015	1-1-04	Amend	2-1-04	812-004-0320	12-5-03	Amend	1-1-04
801-030-0020	1-1-04	Amend	2-1-04	812-004-0340	12-5-03	Amend	1-1-04
801-040-0070	1-1-04	Amend	2-1-04	812-004-0400	12-5-03	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
812-004-0440	1-1-04	Amend(T)	2-1-04	839-017-0500	1-1-04	Adopt	2-1-04
812-004-0535	12-5-03	Amend	1-1-04	839-017-0505	1-1-04	Adopt	2-1-04
812-005-0005	12-5-03	Amend	1-1-04	839-017-0510	1-1-04	Adopt	2-1-04
812-006-0020	12-5-03	Amend	1-1-04	839-017-0515	1-1-04	Adopt	2-1-04
812-010-0020	12-5-03	Amend	1-1-04	839-017-0520	1-1-04	Adopt	2-1-04
812-010-0030	12-5-03	Amend	1-1-04	839-020-0027	1-1-04	Adopt	2-1-04
812-010-0050	12-5-03	Adopt	1-1-04	839-020-0030	1-1-04	Amend	2-1-04
812-010-0060	12-5-03	Amend	1-1-04	839-020-0115	1-1-04	Amend	2-1-04
812-010-0085	12-5-03	Amend	1-1-04	839-020-0125	1-1-04	Amend	2-1-04
812-010-0140	12-5-03	Amend	1-1-04	839-020-0150	2-1-04	Amend	2-1-04
812-010-0240	12-5-03	Repeal	1-1-04	845-003-0590	2-10-04	Amend	1-1-04
812-010-0280	12-5-03	Amend	1-1-04	845-003-0670	12-1-03	Amend	1-1-04
812-010-0290	12-5-03	Adopt	1-1-04	845-005-0304	1-1-04	Amend	2-1-04
812-010-0400	12-5-03	Amend	1-1-04	845-005-0445	1-1-04	Amend(T)	2-1-04
812-010-0420	12-5-03	Amend	1-1-04	845-006-0441	12-1-03	Amend	1-1-04
812-010-0425	12-5-03	Amend	1-1-04	845-009-0015	12-1-03	Amend	1-1-04
812-010-0430	12-5-03	Amend	1-1-04	847-008-0050	12-8-03	Amend	1-1-04
812-010-0440	12-5-03	Amend	1-1-04	850-010-0225	12-5-03	Amend	1-1-04
812-010-0460	12-5-03	Amend	1-1-04	850-010-0226	12-5-03	Amend	1-1-04
812-010-0500	12-5-03	Amend	1-1-04	851-021-0010	12-9-03	Amend	1-1-04
812-010-0510	12-5-03	Adopt	1-1-04	851-031-0010	12-9-03	Amend	1-1-04
812-010-0520	12-5-03	Adopt	1-1-04	851-050-0131	12-9-03	Amend	1-1-04
813-300-0010	12-19-03	Amend	2-1-04	851-050-0133	12-23-03	Amend(T)	2-1-04
813-300-0120	12-19-03	Amend	2-1-04	851-050-0134	12-23-03	Amend(T)	2-1-04
836-009-0007	12-19-03	Amend	1-1-04	851-050-0145	12-23-03	Amend(T)	2-1-04
836-011-0000	12-3-03	Amend	1-1-04	851-050-0150	12-23-03	Suspend	2-1-04
836-031-0755	1-1-04	Amend	2-1-04	851-050-0155	12-23-03	Amend(T)	2-1-04
836-031-0760	1-1-04	Amend	2-1-04	851-050-0161	12-23-03	Adopt(T)	2-1-04
836-031-0855	11-26-03	Adopt(T)	1-1-04	851-050-0170	12-23-03	Amend(T)	2-1-04
836-042-0045	1-1-04	Amend	1-1-04	855-043-0210	12-31-03	Adopt(T)	2-1-04
836-051-0101	1-1-04	Amend	2-1-04	860-012-0100	1-8-04	Adopt	2-1-04
836-051-0106	1-1-04	Adopt	2-1-04	860-012-0190	1-8-04	Adopt	2-1-04
836-071-0180	12-19-03	Amend	1-1-04	860-021-0200	1-9-04	Amend(T)	2-1-04
837-012-0645	1-14-04	Amend	2-1-04	860-024-0020	11-28-03	Amend	1-1-04
837-012-0720	1-14-04	Amend	2-1-04	860-024-0021	11-28-03	Amend	1-1-04
837-012-0830	1-14-04	Amend	2-1-04	860-027-0048	12-11-03	Adopt	1-1-04
837-012-0850	1-14-04	Amend	2-1-04	860-028-0895	11-28-03	Adopt(T)	1-1-04
837-012-1210	1-14-04	Amend	2-1-04	860-032-0510	1-15-04	Adopt	2-1-04
837-012-1220	1-14-04	Amend	2-1-04	860-032-0520	1-15-04	Adopt	2-1-04
837-012-1260	1-14-04	Amend	2-1-04	860-034-0010	1-9-04	Amend(T)	2-1-04
837-012-1290	1-14-04	Amend	2-1-04	860-034-0140	1-9-04	Amend(T)	2-1-04
837-012-1300	1-14-04	Amend	2-1-04	860-035-0010	1-15-04	Repeal	2-1-04
837-012-1320	1-14-04	Amend	2-1-04	860-035-0020	1-15-04	Repeal	2-1-04
837-012-1340	1-14-04	Amend	2-1-04	860-035-0030	1-15-04	Repeal	2-1-04
837-030-0130	1-14-04	Amend	2-1-04	860-035-0040	1-15-04	Repeal	2-1-04
837-030-0220	1-14-04	Amend	2-1-04	860-035-0050	1-15-04	Repeal	2-1-04
837-030-0230	1-14-04	Amend	2-1-04	860-035-0060	1-15-04	Repeal	2-1-04
837-030-0240	1-14-04	Amend	2-1-04	860-035-0070	1-15-04	Repeal	2-1-04
837-030-0250	1-14-04	Amend	2-1-04	860-035-0080	1-15-04	Repeal	2-1-04
837-030-0280	1-14-04	Amend	2-1-04	860-035-0090	1-15-04	Repeal	2-1-04
839-001-0200	1-1-04	Adopt	2-1-04	860-035-0100	1-15-04	Repeal	2-1-04
839-001-0420	1-1-04	Amend	2-1-04	860-035-0110	1-15-04	Repeal	2-1-04
839-001-0470	1-1-04	Amend	2-1-04	860-035-0120	1-15-04	Repeal	2-1-04
839-001-0490	1-1-04	Adopt	2-1-04	860-035-0130	1-15-04	Repeal	2-1-04
839-016-0700	1-5-04	Amend	2-1-04	860-036-0010	12-10-03	Amend(T)	1-1-04
839-017-0004	1-1-04	Amend	2-1-04	860-036-0040	1-9-04	Amend(T)	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
860-036-0330	12-10-03	Suspend	1-1-04	863-050-0035	1-15-04	Adopt(T)	2-1-04
860-036-0370	12-10-03	Adopt(T)	1-1-04	863-050-0040	1-1-04	Adopt	2-1-04
860-036-0380	12-10-03	Adopt(T)	1-1-04	863-050-0050	1-1-04	Amend	2-1-04
860-036-0412	12-10-03	Adopt(T)	1-1-04	863-050-0055	1-1-04	Amend	2-1-04
860-036-0420	12-10-03	Adopt(T)	1-1-04	863-050-0060	1-1-04	Amend	2-1-04
860-036-0757	12-10-03	Adopt(T)	1-1-04	863-050-0065	1-1-04	Amend	2-1-04
860-036-0900	12-10-03	Amend(T)	1-1-04	863-050-0100	1-1-04	Amend	2-1-04
860-036-0905	12-10-03	Amend(T)	1-1-04	863-050-0108	1-1-04	Repeal	2-1-04
860-036-0910	12-10-03	Amend(T)	1-1-04	863-050-0110	1-1-04	Repeal	2-1-04
860-036-0915	12-10-03	Amend(T)	1-1-04	863-050-0115	1-1-04	Amend	2-1-04
860-037-0035	1-9-04	Amend(T)	2-1-04	863-050-0150	1-1-04	Amend	2-1-04
860-037-0308	12-10-03	Adopt(T)	1-1-04	877-020-0020	12-1-03	Amend	1-1-04
860-037-0309	12-10-03	Adopt(T)	1-1-04	918-050-0010	1-1-04	Amend	2-1-04
860-037-0407	12-10-03	Adopt(T)	1-1-04	918-050-0020	1-1-04	Amend	2-1-04
860-037-0547	12-10-03	Adopt(T)	1-1-04	918-440-0015	1-1-04	Amend	1-1-04
860-037-0570	12-10-03	Adopt(T)	1-1-04	918-440-0040	1-1-04	Amend	1-1-04
860-038-0540	1-15-04	Amend	2-1-04	918-440-0050	1-1-04	Amend	1-1-04
860-038-0580	12-11-03	Amend	1-1-04	918-674-0025	1-1-04	Amend	1-1-04
863-015-0015	1-1-04	Amend(T)	2-1-04	918-674-0033	1-1-04	Amend	1-1-04
863-015-0055	1-15-04	Amend(T)	2-1-04	918-780-0035	1-1-04	Adopt	2-1-04
863-015-0080	1-1-04	Amend(T)	2-1-04	918-780-0120	1-1-04	Repeal	2-1-04
863-015-0200	1-1-04	Amend(T)	2-1-04	972-010-0030	1-16-04	Adopt	2-1-04
863-050-0000	1-1-04	Adopt	2-1-04	972-030-0010	1-16-04	Adopt	2-1-04
863-050-0015	1-1-04	Amend	2-1-04	972-030-0020	1-16-04	Adopt	2-1-04
863-050-0020	1-1-04	Amend	2-1-04	972-030-0030	1-16-04	Adopt	2-1-04
863-050-0025	1-1-04	Amend	2-1-04	972-030-0040	1-16-04	Adopt	2-1-04